

82 - 1947

NO. _____

Office-Supreme Court, U.S.

FILED

MAY 3 1983

ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

ERICH KOKER and BEATRICE E. KOKER,

APPELLANTS

VS

FREDERICK V. BETTS and JANE DOE BETTS,
his wife, and their marital community,
and SKEEL, MCKELVY, HENKE, EVANSON &
BETTS, Law Firm Of Frederick V. Betts,

APPELLEES

AND

KENNETH L. LeMASTER and JANE DOE
LeMASTER, his wife, and their marital
community, and SAFECO INSURANCE COMPANY
OF AMERICA, and GENERAL INSURANCE COMPANY
OF AMERICA, and FIRST NATIONAL INSURANCE
COMPANY OF AMERICA.

APPELLEES

ON APPEAL FROM THE COURT
OF APPEALS DIVISION I AND
THE SUPREME COURT OF THE
STATE OF WASHINGTON

JURISDICTIONAL STATEMENT

Beatrice E. Koker
Erich Koker
Pro Se

939--N. 105th St.
Seattle, WN 98133
(206)783-6998

QUESTIONS PRESENTED

The Constitutional protection from an improperly granted, misapplied and misused summary judgment by the terms of 28 USCA - Rule 56 has been violated by Washington State Courts at the trial court, appellate court and Supreme Court level, and at the same time violating the State Court Rule for summary judgment CR 56, identical to the Constitutional Rule 56.

There is monumental jeopardy to the system of justice to misuse the summary judgment rule DESIGNED FOR GOOD.

I (a)

QUESTION:

Did the trial court in error grant the summary judgment affirmed in error on appeal and refused review in error in the State Supreme Court on three-fourths of the case at bar to all defendants, and DENY

AN ABSOLUTE CONSTITUTIONAL RIGHT TO A TRIAL,
FULLY AND FAIRLY HEARD IN A MEANINGFUL
MANNER AND REDRESS AND REMEDY AND RESTITUT-
ION to the non-moving party Beatrice Koker --
when facts and evidence, rule and law show
this case to be only for the trier of the
facts and THE DEFENDANTS DID NOT MEET THE
BURDEN OF PROOF nor the elements of 28 USCA
Rule 56 and State CR 56?

I (b)

Was the GOOD RULE OF SUMMARY JUDGMENT
which protects the non-moving party from
denial of rights, misused when the facts of
this case do not warrant directed verdict
for defendants, there were no defenses, nil
defenses, misleading defenses, no motion,
motion not in affidavit form, general denial,
questions of veracity, substance, doubt,
intent, material facts, complexity, deceit,
lies, wrongdoing, issues of credibility,
obstruction of justice, conspiracy-collusion,
and all other elements on record?

II

QUESTION:

Shall a state reviewing court be Constitutionally allowed to reverse a denied summary judgment on cross-appeal not based on abuse of discretion by the judge, but based on false premise of insufficient lack of standard of care affidavit, thus removing a jury issue and right to trial?

II(a)

Question:

Where is the consideration by the review that defendant one did not have an expert witness to say he did meet the standard of care in untruth to a judge, covering up untruths in concert, submitting a pattern jury instruction changing the theory of the case from admitted liability to liability, lack of use of his obvious skill, knowledge and capacity after over 40 years an attorney?

III

QUESTION: Did the Court of Appeals Div I

deny Beatrice Koker Constitutional rights in a meaningless ordeal-appeal and denial of access to the courts, with the court evading and avoiding and misapprehending both appeals and affirming a denial of a right to a fully and fairly heard trial in a meaningful manner, and bypassing the errors and issues, statement of the facts and argument of the appellants briefs, and reversing the right to a trial for legal malpractice by reversing cross-appeal? Is evading and avoiding a federal question in itself?

IV

QUESTION: When a state creates a law to declare an "agency of the state" to be the Bar Association, and compels attorneys to belong and pay dues and be compulsory members or be banned from practice of law, is that an "under color of law" state ruled entity subject to a constitutional challenge to exclude attorneys from under color of law?

QUESTION:

Does temptation to wrongdoing of quasi judicial officers of the courts flourish knowing they are not "under color of Law"? How could being under color of law possibly affect good faith and right and truth of an attorney? Would not the "under color" discourage wrongdoing, instead of committing wrong and hiding behind the escape hatch of "not under color of law"?

V

QUESTION:

The circumstances of the present time demand a change in attorneys who have earned the distrust of people and the changes have come to other segments such as municipalities. Will the under color of law status of an attorney help regain respect for the legal profession and the system? This question first brought to Supreme Court. State.

VI.

QUESTION: I challenge the Washington State rule for discretionary rehearings, in that the Constitution of the United States says the "day in court" is not complete until the last rehearing. That is conflict. I challenge the repeal of rule ROA I-50 (rehearing) that denies the right to be heard, at the discretion of the court.

Shall the law of the land allow a rule that says a Supreme Court can decide whether to "hear", instead of deciding a guarantee Constitutionally to HEAR IT and then have the discretion to say yes or no?

Has this petitioner been denied a Federal right to ask reconsideration, rehearing or denial of petition for review and be denied a hearing without a yes or no on the motion?

VII
CLASS

Shall the class of client-litigant-citizen-adversary-injured person be jurisdictionally allowed to enter your court?

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395 US 411, 23 L ed 2d 404,
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90 S Ct 35, 396 US 869,
24 L Ed 2d 123 (1969)

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19 Wash App 515, 576 P 2d 426 (1978)

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83 Wn 2d 491, 419 P 2d 7 (1974)

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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

ERICH KOKER and BEATRICE E. KOKER,
Husband and Wife,
APPELLANTS

VS

FREDERICK V. BETTS and JANE DOE BETTS, his
wife, and their marital community, and
SKEEL, McKELVY, HENKE, EVANSON & BETTS, Law
Firm Of Frederick V. Betts,

APPELLEES

AND

KENNETH L. LeMASTER and JANE DOE LeMASTER,
his wife, and their marital community, and
SAFECO INSURANCE COMPANY OF AMERICA, AND
GENERAL INSURANCE COMPANY OF AMERICA, AND
FIRST NATIONAL INSURANCE COMPANY OF AMERICA.

APPELLEES

ON APPEAL FROM THE COURT OF APPEALS
DIVISION I AND THE SUPREME COURT OF
THE STATE OF WASHINGTON

JURISDICTIONAL STATEMENT

Petitioners Beatrice and Erich Koker
respectfully ask jurisdiction, or in the

alternative probable jurisdiction to the disposition on the merits, reversal, remand, trial or settlement through the Supreme Court of the United States, reviewing the orders, judgments, opinions of the 3-level courts of the State of Washington.

OPINIONS BELOW

The Court of Appeals Division I of the State of Washington affirmed Superior Court King County rulings and orders which granted summary judgments to all defendants on Cause II III IV of the complaint.

The Superior Court denied summary judgment to Def/Respondent #1 F. V. Betts, et ux, et al for legal malpractice, which denial was REVERSED in cross appeal and petition for review denied.

The petition for reconsideration-rehearing denied to be heard. State remedies exhausted by this pro se citizen.

OPINIONS BELOW
(Superior Court)

Petitioner as plaintiff filed Complaint
#864509 June 7, 1979 against Defendants #1
et ux, et al and Defendants #2 et ux, et al.

No one answered the complaint.
Separate Summary Judgment Motions,
Months Apart by Def #1 and Def #2.

Summary Judgment Granted May 16, 1980
Three Parts Complaint To Def #1
(RP "SUMMARY JUDGMENT HEARING")

Summary Judgment Denied May 15, 1980
One Part Complaint
(AT HEARING)

Plaintiffs' Motion Reconsider--June 6, 1980
action denied.
(AT HEARING)

Judge Recuses Himself June 6, 1980

Summary Judgment Granted Def #2 Feb 20, 1980
Three Parts Complaint
(II III IV - By Letter)

Plaintiff Motion Reconsider- Mar 6, 1980
ation Granted

Reconsideration Denied May 15, 1980
Summary Judgment Granted May 15, 1980

Order May 15, 1980

PLEASE SEE APPENDIX "A"

OPINIONS BELOW
Review

Defendants #1: The Court of Appeals Division I
AFFIRMED granting summary judgment three parts
of complaint, and REVERSED the denied summary
judgment legal malpractice. July 6, 1982
Motion for reconsideration denied Aug 5, 1982:

Defendants #2: The Court of Appeals Division I
AFFIRMED granting summary judgment three parts
of complaint. July 6, 1982. Motion for the
reconsideration denied Aug 5, 1982.

Please note the separate summary
summary judgment in Superior Court
became separate appeals.

REVIEW
SUPREME COURT OF WASHINGTON

Defendants #1 and Defendants #2 Petition for
Review by plaintiff/appellant, (petitioner)
DENIED. Motion for reconsideration-rehearing
denied. Petition denied Nov 5, 1982, final
judges ruling on motion to exhaust all state
remedies heard and denied January 7, 1983.

Please see APPENDIX "A"

All orders, opinions, recusal letter of the judge et al will be found in the appendix.

(Def/Respondent #1 A-1 To A-18:

(Def/Respondents #2 B-1 To B-14:

THE UNREPORTED OPINIONS

[No. 9346-1-I. Division One. July 6, 1982.]

ERICK KOKER, ET AL, *Appellants*, v. FREDERICK V. BETTS, ET AL, *Respondents*.

Appeal from a judgment of the Superior Court for King County, No. 864509, William C. Goodloe, J., entered September 3, 1980. *Affirmed in part and reversed in part* by unpublished per curiam opinion.

[No. 8935-8-I. Division One. July 6, 1982.]

ERICK KOKER, ET AL, *Appellants*, v. FREDERICK V. BETTS, ET AL, *Defendants*, KENNETH L. LEMASTER, ET AL, *Respondents*.

Appeal from a judgment of the Superior Court for King County, No. 864509, William C. Goodloe, J., entered May 15, 1980. *Affirmed* by unpublished per curiam opinion.

Koker, et al, Petitioners, v. Betts, et al, Respondents, No. 49006-6. Petition for review of a decision of the Court of Appeals, July 6, 1982, 32 Wn. App. 1020. *Denied* November 5, 1982.

Koker, et al, Petitioners, v. Betts, et al, Defendants, LeMaster, et al, Respondents, No. 48990-4. Petition for review of a decision of the Court of Appeals, July 6, 1982, 32 Wn. App. 1020. *Denied* November 5, 1982.

Supreme Court of the State of Washington
98 Wn 2d 1003 (1982)

Court of Appeals Division I
32 Wash App 1020 (1982)

STANDING
JUSTICABLE CONTROVERSY

The case at bar is a matter appropriate for this Court's review. This controversy is real and extensive and complex and ugly and a tort case. All is reality, not hypothetical. Federal Quested presented. Ruled.

This repugnant controversy is a claim of rights, a claim for redress and remedy and restitution for manifest deprivation and harm for damages personally, intercepted by court dismissing contrary to law by granting summary judgment, and reversing denied summary judgment. Plaintiff/Appellants/Petitioners Kokers are real parties in interest. The issues are substantive and substantiated with proof from the record. There is obstruction of justice by those with constitutionally given right as attorneys to be entrusted with "protection of permanently injured litigants" and "protection of people legally."

Damages in the case at bar exceed \$10,000. many times over.

JURISDICTION

This Court's jurisdiction invoked for both Def/Respondents #1 and #2 under 28 USC §1257(2)(3) AND 28 USCA - Rule 56 and equivalent Washington State Summary CR Judgment Rule 56: Jurisdiction invoked under entire Constitution of the United States and Titles USCA for denial of right of trial fully and fairly heard in meaningful manner by granting of summary judgments contrary to law, fact, rule and evidence. The State Appellate Court Div I affirmed the improper summary judgments given without a motion, general denial, no defenses, nil defenses, motion not in affidavit form, and neither defendant kept the burden of proof.

In addition, the denied summary judgment for malpractice cross-appealed is reversed improperly and prejudicially. The Supreme Court of the state refused review. The Courts of the state have so departed from accepted and usual court of judicial proceed-

ings in summary judgment and have sanctioned such departure by lower court as to call for an exercise of supervision and justice from the highest court of land. Grievous harm, deprivation of rights, damages occurred and there is no recourse to proper constitutional right to trial fully and fairly heard in meaningful manner. There is no way for restitution, redress and remedy in State of Washington Courts. Justice is estopped.

The Supreme Court of the State refused to consider reconsideration-rehearing when petitioner applied. The ugly repugnancy of this case at bar being kept out of the courts and denied trial will benefit the defendants and their profession - Attorneys.

The judgments, orders, opinions of Superior Court, Court of Appeals Div I and Washington State Supreme Court for Def-One will be found: APPENDIX A-1 Through A-18:
Def-Two: APPENDIX B-1 Through B-14:

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

Cited And Set Forth
In Appendix As
Follows:

28 USCA §1257(2)(3): APPENDIX C-60 Thru 63:
28 USC 1257(2)(3):

42 USCA §1985(2)(3): APPENDIX C-64: 65: 66:
42 USC 1985(2)(3):

42 USCA §1986: APPENDIX C-67:
42 USCA §1983: APPENDIX C-67

28 USCA - RULE 56: APPENDIX C-68 Thru 73:
CR 56: (State): APPENDIX C-1 Thru 20:

ARTICLE III §1: APPENDIX C-74: C-59(b):
AMENDMENT V: APPENDIX C-75 and C-76:
AMENDMENT VII: APPENDIX C-77:
Amendment XIV: APPENDIX C-78 and C-79:

CONSTITUTION APPENDIX C-80: C-81:
STATE OF WASHINGTON

RCW 2.48 APPENDIX C-82: C-83:
STATE BAR ACT

QUASI STATE OFFICER

Attorneys and counselors of a court,
though not properly "public officers", are
"quasi state officers" whose justice is ad-
ministered by the court. Claxton v. Johnson
County, 20 S.E.2d 606, 610, 194 Ga. 43.

There is a pyramid of obstruction of justice by the defendants and state courts in the case at bar. There is evading and avoiding facts and issues and error by all. The state courts could not rule without ruling on the Federal Question of a right to a trial. There is eternal departure from summary judgment rules both state and Federal. Both 28 USCA - Rule 56 and STATE rule Cr 56 are set out in excerpts and summary judgment authorities in APPENDIX C-1 Through C-20: and APPENDIX C-43 Through C-58(a): Denial of reconsideration-rehearing motion to be heard, confers jurisdiction on this court.

28 USCS §1257, n 97

"Decision in terms of Federal question is not essential; if decision of Federal question was necessarily involved in judgment rendered, it is not matter of importance that state court avoided all reference to question."
Chapman v Goodnow's Admr. (1887)
123 US 540, 31 L Ed 235, 8 S Ct 211:
(Cases Omitted)

THE CHARACTERS
IN THE CASE AT BAR

Frederick V. Betts, was the plaintiff attorney for Beatrice Koker in a personal injury action. Mr. Betts has been staff attorney for an insurance company many years and is well-known as a defense attorney. (I did not know until after he was no longer my attorney.) He is Def/Respondent #1:

Kenneth L. LeMaster was the defense atty in the same personal injury action. He is employed by Safeco Three (title page complaint) who insured both cars in wreck 1971. Mr. LeMaster appeared against Beatrice Koker, their own insured. He is Def/Respondent #2:

Beatrice Koker permanently injured wearing leg brace for life, (drop foot) and permanent cervical injury is petitioner herein and the appellant in appeal below and plaintiff in Superior Court. I am a homebody, not a woman's lib. I have a high school and business school education, and diploma from N. I. A. (newsriting)

STATEMENT OF THE CASE

DEF #1

F. V. BETTS
Plaintiff
Attorney
TRIAL
1976

ATTORNEYS
FOR
PERSONAL
INJURY
TRIAL

DEF #2

KENNETH L.
LeMASTER
Defense Atty
TRIAL
1976

1976 Trial For Damages Only - Defense Admitted Liability. Jury determination as criminal - voting "guilty or not guilty" to determine damages.

Both the plaintiff attorney (Betts) and the defense attorney (LeMaster) committed proven deceit, untruths, misdeeds, concealment in concert, conspiracy, collusion, aiding and abetting. Et Al.

Misrepresentation of fact, suppression of fact and concealment in two untruths are material facts to injuries from the auto accident of 1971, resulting in trial of 1976. The award \$4,600. for permanent drop foot injury et al.

RESULT

DEF #1
F. V. BETTS
ET UX, ET AL
KOKER V BETTS

THE CASE AT BAR

REPUGNANT PROVEN
FACTS OF DEPRIVED
DAMAGED RIGHTS AND
REDRESS AND REMEDY

DEF #2
KENNETH L.
LeMASTER
ET UX, ET AL
KOKER V
LeMASTER

The Complaint holds four sections, two defendants et ux, et al, wrongdoing that is not eligible for summary judgment. MULTIPLE GROUNDS NOT SEPARABLE.

STATEMENT OF THE CASE

The Complaint: The complaint in the case at bar filed by Beatrice Koker June 7, 1979. The complaint is evidentiary, certified, affidavited. There are four parts to the complaint for purpose of one trial, multiple grounds not separable.

Part I

This is the legal malpractice against my own attorney CP FILE #1 p 697 - Para 1.16 Through 1.84: Damages Para 1.85 Through 1.89: Appeal #9346-1-I: (Def-One) This action denied summary judgment Superior Court, and reversed on appeal, petition for review - denied.

Part II

The second part of the complaint involves both defendant attorneys One and Two. There are untruths to judges and jury involving both attorneys in concert. The Complaint is identical for both defendants Cause II III and IV.

The complaint is identical for both records. CP FILE #1 p 697 - Def-One (Betts) Appeal #9346-1-I: and CP FILE #1 p 425 - Appeal #8935-8-I: Paragraphs 2.1 Thru 2.58:

Allegations: Paragraph 2.3:

Specific Examples: Para 2.4 Through 2.55:

Damages: Paragraphs 2.56 Through 2.58:

- Untruth #1: Para 2.4 Through 2.21:
- Untruth #2: Para 2.22 Through 2.31:
- Untruth #3: Para 2.32 Through 2.46:
- Untruth #4: Para 2.47 Through 2.55:
- Untruth #5: Para 2.56 and 2.57:

Part III

This section is closely related to and the result of Part I and II and stated in Paragraphs 3.1 Through 3.9. The allegations include the deliberate and intentional acts in Cause I and II committed by the defendant attorneys who denied me a trial fully and fairly heard in a meaningful manner and denied me a day in court in honesty and truth.

I allege as a class of client, and litigant, citizen, public deprivation and harm and damage from corruption of legal proceedings by quasi-judicial officers of the court in their superior position and alleged improper purpose in trial deliberately and intentionally by both. There is wilful obstruction of justice, denial of due process and equal protection.

Part IV

This is for outrage and anguish. I am crippled, in pain, impaired, disabled and rejected from the accident injuries. I am the victim of totalitarian injustice from the deeds and misdeeds by both attorneys in untruths, deceit, concealment, misrepresentation and suppression of facts material to the injuries in a trial. Para 4.7--4.24:

All defendants and all actions are intertwined and interrelated. The title page states "MULTIPLE GROUNDS NOT SEPARABLE."

Both defendants filed separate summary judgment motions. Def-One motion for legal malpractice only, general denial, no defenses. The attorney-of-record is in conflict with himself three times over this matter and admits there was no motion for three parts of the complaint. The BURDEN OF PROOF was not met. CR 56 and 28USCA -RULE 56 not met.

Def-Two had nil defenses of res judicata that he applied to the elements in the legal malpractice of Def-One. Immunity to defamation did not hold as there were no allegations for defamation. No immunity to third parties as the exceptions in deceit et al. The motion for summary judgment was not in affidavit form. The burden of proof was not met by Def-Two either. The affidavit of Kenneth L. LeMaster raised issues of credibility, and substance and veracity.

The court divided joint-tortfeasors while one was still in proceedings thus kidnapping issues only for the trier.

The summary judgment rules are protective of the non-moving party when the rules are properly invoked. There is treachery and jeopardy and injustice when the summary judgment rules are misappropriated, misused, misapplied, misunderstood and misapprehended.

Both defendants filed the motion for summary judgment without presenting evidence, without meeting the burden of proof. That estopps summary judgment at that point without further proceedings.

The order of the court granted summary judgment Cause II III IV to both defendants, and denied the legal malpractice. A jury demand had been made, and noted for docket trial. But no case, no trial, denied due process throughout the state courts.

This is a proverbial "hot potato case" and involves a learned profession. "Brothers of the profession" indulge in conspiracy of silence, from my personal knowledge, experience.

The trial court dismissed one joint-tortfeasor while the other still litigating, thus separating the concert of action which is only for the trier of the fact. That order also left one lone conspirator, thus the court adjudicated what is only for the trier of fact. "Divided They Fell." It is improper to grant remedy to one party about which both parties are litigating.

Wash Court Rules Annot 258 b. 16 CR 56:

Summary Judgment Rule set forth APPENDIX

C-1 Through C-20:

Summary judgment is not to be granted unless the same facts warrant a directed verdict at trial. Shall there be directed verdict to those who "create victims" from their deceit, wrongdoing, untruths, and misdeeds?

Def-One submitted deposition of the plaintiff doctor with 18 pages missing, and a petition for review submitted by Def-Two

with 17 exhibits missing. Those pages and exhibits were relevant. Beatrice Koker then filed in complete form all of the plaintiff doctors' depositions. Filed, opened, published and transferred to the case at bar.

The preassignment judge recused himself because there was an approx 30 year friendship with one defendant, and an "uneasy feeling from the very beginning." I objected to not revealing this fact before summary judgment proceedings. Recusal Letter APPENDIX A-5:

Petitioner asks probable jurisdiction, or postponement jurisdiction or jurisdiction on appeal to the United States Supreme Court. The STATEMENT OF THE CASE and reference to the facts and CP AND RP records will be found as follows:

DEF/RESPONDENT #1 - APPENDIX A-41 Thru A-58:
Appeal #9346-1-I

DEF/RESPONDENT #2 - APPENDIX B-21 Thru B-40:
Appeal #8935-8-I

ERRORS: A-59: A-60: B-19: B-20:

THE SUMMARY JUDGMENT PROCEEDINGS

Procedural History

No answers to the evidentiary complaint by any defendant. No interrogatories nor depositions. Two separate summary judgments.

**MOVING PARTIES FAILED
THE BURDEN OF PROOF**

The sum total of filed and unfiled documents presented by defendants are as follows:

DEF-ONE (Betts)
Appeal #9346-1-I

Motion For Summary Judgment-
CP FILE #87 p 672:

Affidavit Of F. V. Betts Stating Motion Is
For One Cause Only. No Motion For Other
Three Parts. No Amendment. General Denial.
Summary Judgment Granted Without Motion
CP FILE #86 p 674:

Two Mystery Affidavits By F. V. Betts. No
Explanation. Letters To Beatrice Koker
Attached To One, And Instructions Of 1976
Trial Attached To Other.
CP FILE #111 p 403; CP FILE #112 p 390:

(ONE LETTER CONSPIRACY FACTOR
(CP FILE #117 p 356: AND UNTRUTH
(#4 CP FILE #1 p 697: Para 2.47-2.55:

The skeletal and skimpy filing for summary judgment of Def-Two does not meet the burden of proof. The motion was not even in affidavit form, and is general denial and inappropriate defenses.

MOVING PARTIES FAILED
THE BURDEN OF PROOF

DEF-TWO (LeMaster)
Appeal #8935-8-I

Motion For Summary Judgment -
CP FILE #62 p 411:

Not In Affidavit Form: Objections On Record:

Affidavit Of Kenneth L. LeMaster

Creating Issues Of Credibility And Veracity:
CP FILE #63 p 408:

(CP FILE #73 P 359: Beatrice Koker
And Dr. Wm. K. Sata Affidavits
Attacking Credibility And Veracity

There are the memorandums in support of motion for summary judgment for both defendants, and memorandums in opposition by Beatrice Koker. A numerical list of CP SET FOR IN APPENDIX AS FOLLOWS:

Def-One A-37-38-39-40: Def-Two: B-15-16-17-18:

MEANINGLESS
APPEALS

The State is not required to provide appellate courts, but when appeal is provided, as it is in the State of Washington, then appeal must meet the requirements of due process. Constitution Amendment 14
Note 1240 Appellate Procedure:

The requirements of due process not met on appeal to Court of Appeals Div I. The cross appeal of Def-One is not brought to appellate court for approx 16 months after filing, even though the Def-One had knowledge the cross appeal was still in the CP files below.

An extension of time for one purpose is used for two purposes, one without permission of the court.

A show cause motion and report to court on discrepancies between Def-One Law Firm affidavit and the records of four counties.

The "report" was filed to appellate court relevant to the appeal. Adversary #1 wrote to unfile the report instead of answering the show-cause. Report unfiled.

I refiled it to appeal to the judges, and again it is unfiled and returned to me. The report is here if this court asks to review.

A new issue for review filed, that a trial judge considered a document that was never filed. Ignored. And other.

An additional authority timely filed and unfiled, refiled, unfiled, and filed. A notice the additional authority filed "with no further action," thus violating a right both ways. The additional authority was properly and timely filed and that authority is right on point for reversal or dismissal of cross-appeal. Et al.

The opinions of the Court of Appeals ARE challenged in APPENDIX C-32 Thru C-42:

Appellants Civil Appeal Statement

I N I

Appeal #9346-1-I p 60: and Appeal 8935-8-I

I G I

p 50: relief sought that appellants and respondents each pay their own attorney fees and costs. There was no answer, no objection.

Neither respondent mentioned fees nor costs in their briefs, there was no affidavit by rule days before oral argument, no mention of fees-costs in the oral argument itself.

Def-One handled their expenses and did not submit a bill. But DEF-TWO did. I objected for the aforementioned reasons, and there was no answer on my final motion, but a charge allowed for Def-Two. Objections.

The opinion of the court listed my husband as dead. He is not, but it took an errata to correct their indifference to facts.

The Court of Appeals reversed a denied summary judgment for malpractice. Def-One. The evading conclusion is rejection by that court of the "lack of standard of care affidavit" and in manifest error saying there is no material fact.

The affidavit is in CP FILE #123 p 244: written by an attorney who dared to bridge the conspiracy of silence in the legal area. The Lawyer's Referral advised me to go out of the city for this affidavit as they also met the same wall of silence and avoiding that which would be unpleasant to do against a brotherhood attorney.

The court ruled without even considering abuse of discretion of the court below. The one concerted effort is how to release the attorneys, and not for the justice of the case nor the grievous harm and damage and injury to property of person. APPENDIX
C-32 Through C-42: Challenge to decision court.

The Court of Appeals in the case at bar diverted the course of summary judgment protection under the Constitution, and affirmed the granting of summary judgment 3/4 of the case.

The jury questions adjudicated on appeal. As for an example in the reversal of the malpractice in 1 PROFESSIONAL LIABILITY 3-134 §3298:

"Ore.-- "Where attorneys alleged negligence consisted of failure to properly present factual elements of case, determination of probable result in prior action giving rise to malpractice claim was a jury question."

CHOCKTOOT V SMITH 571 P 2d 1255

(Ore. 1977) 2 Prof Liability Rptr 176:

Def-One did not ask key questions of the treating doctor in the trial of 1976 - - he dropped the instruction for pre-existing condition, and failed to call the doctor who took the myelogram and could further prove the damages. THERE IS SUPPRESSION AND MISREPRESENTATION OF MATERIAL FACTS.

CASES BELIEVED TO
SUSTAIN JURISDICTION OF
UNITED STATES SUPREME COURT

Cases cited here are set forth as per rule in APPENDIX C-43 Through C-59: The APPENDIX C-43 Through C-48: are cases of conflicting ruling in Washington State Appellate and Supreme Courts.

The case before the bench is very close to the State Courts because it involves two well-known attorneys. Def-One has also been found negligent and in bad faith by a jury in another case relevant to the contract of attorney-client in the case at bar. Def-One Complaint CP FILE #1 p 697 - Para 4.16 Through 4.19: Appeal #9346-1-I:

Beside each cited case, the reference to the exact page in the appendix for the cases set forth there.

The summary judgment 28 USCA - Rule 56 and State CR 56 are of such, as to deny SJ.

BERNAL V AMERICAN HONDA 11 Wash App
903, 527 P 2d 273 (1974) Division I

This is a personal injury case. The
summary judgment granted to defendant in
trial court, Court of Appeals affirmed,
and Washington State Supreme Court re-
versed. Conflict Case Washington Courts

C-43
C-43(a)

HELLING V CAREY 83 Wn 2d 514, 519
P 2d 981 (1974): Verdict for defendant in
medical malpractice, affirmed by Court of
Appeals, State of Washington Supreme Court
reversed. State Of Washington Conflict Case.

C-44

FELSMAN V KESSLER 2 Wash App 493, 469
P 2d 691 (1970): Wrongful death. Summary
judgment to defendant, Court of Appeals
Div III reversed and remanded.

C-45
C-45(a)

IN ESTATE OF WAHL 31 Wash App 815
(1982) Beneficiaries appeal and Court of
Appeals Div III reversed and remanded.
Summary judgment.

C-46

GEISE V LEE 10 Wash App 728, 519 P
2d 1005 (1974): DIV I 84 Wn 2d 866, 529 P 2d
1054 (1975): Judgment in favor of defend-
ants, medical malpractice. DIV I affirmed,
and Supreme Court of the State of Washington
reversed and remanded. C-47

OLYMPIC FISH PRODUCT V LLOYD 23 Wash
App 499, 597 P 2d 436 (1979) Div I: 93 Wn
2d 596, 611 P 2d 737 (1980): C-48

Summary judgment in favor of defendants
and Court of Appeals DIVISION I reversed
and the State Supreme Court upheld the
reversal.

Please note that two of the judges in
the Court of Appeals panel in the above
case, were the same as in the case at bar.
The ruling there was only the attorney Def
know what their intent, and for the trier.
This has been my contention in this case
before the bench and the same court and two
of the same judges ruled against me. ? ?

These cases further believed to sustain the jurisdiction of the United States Supreme Court. Cited here and set forth in APPENDIX C-

LAMON V McDONNELL DOUGLAS CORP. 19 Wash App 515, 576 P 2d 426 (1978) a granted C-49 summary judgment reversed and remanded for trial. MORRIS V McNICOL 83 Wn 2d 491, 419 P 2d 7 (1974): a summary judgment in favor of defendants reversed and remanded. C-50

BUNZEL V AM. ACADEMY OF ORTHOPAEDIC 165 Cal Rptr 433 (1980) 107 Cal App 3d 165: Summary judgment granted defendants and supreme court of California reversed. C-51

MURPHY V ALLSTATE INS CO 147 Cal Rptr 565 (1978) 83 Cal App 3d 38. Summary judgment entered for insurer in five causes of action for fraud, conspiracy, bad faith, emotional distress. Reversed. C-51(a)

GRAVES V P. J. TAGGARES CO. 94 Wn 2d

298, 616 P 2d 1223 (1980): Plaintiff
moving party and Superior Court refused to
vacate summary judgment. Court of Appeals
reversed, and Supreme Court affirmed.
The burden is on the moving party.

BERNARD V VIDRINE 365 So 2d 525 (3rd
Cir., 1978) summary judgment granted to
defendants. Held that summary judgment
not intended to be used to circumvent right
to trial.

FREIDMAN V MEYERS (CA NY 1973 Second
Cir) 482 F 2d 435: Defendants granted
summary judgment, reversed on appeal.

SHERWOOD V MOXEE SCHOOL DIST 58 Wn 2d
351, 363 P 2d 138 (1961): Stating a claim
following the accepted rule of the United
States Supreme Court.

HALPERN V LAVINE 60 NYS 2d 121 (1946)
Defendants granted summary judgment. Final
ruling reversed.

WITTLIN V GIACALONE 154 F 2d 20 (1946)

Summary judgment granted plaintiff, reversed
and remanded and summary judgment denied. C-55^a

TITSWORTH V MONDO 467 NYS 2d 793

(1978) 95 Misc 2d 233. Attorney filed for
summary judgment and it was denied. Whether
lawyer's conduct constituted malpractice C-56
is question of fact.

HONEYMAN V HANAN, EXECUTOR 271 NY 564

Judgment vacated. Federal question. C-57

COLLINS V HARDYMAN 183 F 2d 308 (1950)

Conspiracy by private individuals not
acting under color of state law. C-58

TAYLOR V GILMARTIN 686 F 2d 1346 (1982)

Summary judgment granted defendants. The
plaintiff appealed and won new trial. C-58(a)

GRIFFIN V BRECKENRIDGE 410 F 2d 817

(1969) Lost in lower courts, and United
States Supreme Court reversed. C-59

CIVIL RIGHTS
PRIVATE CONSPIRACIES

The conspiracy and disguise language of what finally became 42 USCA §1985(3) appears to have been from Civil Rights Act of 1871, 17 Stat 13 §2 and applies as well to 18 USC §241. Cong. Globe, 41st Cong. 2d Sess., 3611-3613 (1870)

MEANING OF DISGUISE

There are two meanings in law to the word "disguise." One, the obvious of disguising appearance to conceal the person who wears it, or altering the appearance so as not to be recognized.

The other meaning of disguise which applies to the case at bar is found in Black's Law Dictionary 5th Edition p 420:

Disguise: "To obscure the existence or true state or character of a person or thing."

CIVIL RIGHTS
PRIVATE CONSPIRACIES

The case at bar involves 42 USCA §1985
(3) even though no negro people are involved,
no one inflicted with clubbing physically
nor any murder threats. The conspiracy in
the case before the bench involves a subtle
concealment of lies to judges and jury
taking a constitutional right to a trial NOT
fully and fairly heard in a meaningful manner.

There is a split in the circuits on the
issue of whether the GRIFFIN Court's require-
ment of allegations of racial or class-based
requirement for 1985(3) applies to first
clause of section 28 USCA §1985(2). The
united states Courts of Appeals for the Third,
Ninth, and District of Columbia Circuits have
concluded that a claim under the first clause
of section 1985(2) does not require an alleg-
ation of racial or other class-based discrim-
ination. RUTLEDGE V ARIZONA BOARD OF REGENTS

660 F 2d 1345, 1354-55 (9th Cir 1981) and
McCORD V BAILEY 636 F 2d 606, 614-617 (D.C.
Cir 1980): Cert Denied 451 US 983, 101 S Ct
2314, 68 L ed 2d 539 (1981): BRAWER V
HOROWITZ 535 F 2d 830, 840, (3rd Cir., 1976):

The United States Courts of Appeals for
the Fifth Circuit and Eighth Circuits have
decided that racial or other class-based
allegations required under section 1985(3)
also applicable to both clauses of section
1985(2): KIMBLE V D. J. McDUFFY, Inc. 648
F 2d 340, 346-348 (5th Cir en banc) Cert.
denied US , 102 S Ct 687, 70 L Ed
651 (1981): JONES V UNITED STATES 536 F 2d
269, 271 (8th Cir. 1976) Cert. denied 429 US
1039, 97 S Ct 735, 50 L Ed 2d 750 (1977):

The second portion of 42 §1985(2)
creates a private cause of action against
persons for interference with state court
proceedings. Denial of procedural due process
and denial of procedural due equal protection

"A lie is a lie, no matter what its subject, and if it is in any way relevant to the case, the district attorney has the responsibility and the duty to correct what he knows to be false and elicit the truth. . ." p 269 NAPUE V ILLINOIS 300 U. S. 264 (1959):

The case at bar holds four untruths by defense attorney regarding litigation and trial. (Def-Two Herein) Def-One, the plaintiff attorney then, knew of these lies and covered up protecting a colleague and grievously harming and denying rights, redress, remedy, restitution by both to this petitioner. Denial of due process of law. Set forth

In ACTION V GANNON 450 F2d 1227 (1971) The specific language of 14th Amendment §5 enforces rights guaranteed by the Amendment against private conspiracies by individuals as well as under color of law. Set Forth C-43

"Fraudulent concealment" is the intentional nondisclosure of material facts by one owing a duty to disclose." Allen v Layton 235 A 2d 261 (1) (1967) Fraud Wests Key 17: 23 Am Jur Fraud and Deceit §578 p 854

This is an action on behalf of church members to enjoin interference with church services by human rights demonstrators. Jurisdiction found 303 F Supp 1240 and a preliminary injunction granted. The Court later made the injunction permanent, from which the defendant appealed.

The Court of Appeals held that under civil rights statute affording civil remedy for conspiracy to deprive person or class of persons of equal protection of laws or equal privileges by and arising under that Amendment; and Congress is thus fully empowered to determine that punishment of private conspiracies interfering with the exercise of such a right is necessary to its full protection.

Under Fourteenth Amendment Section §5 Congress has power to enact laws punishing all conspiracies--with or without state action.

PRESENTING FALSE
FACTS TO JURY
PREVENTS DUE PROCESS
TAINTED TRIAL

NAPUE v ILLINOIS 360 U.S. 264 (1959)

At petitioner's trial in state court where he was convicted of murder, the principal witness for state was an accomplice then serving a 199 year sentence for the same murder. The state witness testified at the trial that he had not received a promise of consideration in return for his testimony. The assistant State's attorney had in fact promised him consideration, but the attorney did nothing to correct the witness' false testimony. Held: The failure of the prosecutor to correct the testimony of the witness which he knew to be false denied petitioner due process of law in violation of the 14th Amendment. Reversed.

. In the case at bar, there are lies
by attorneys to the judges and jury.

WHERE AND HOW
FEDERAL QUESTION RAISED
(From Record)

Due process means more than just bodies given notice and coming to proceedings to expound. Trials must be fully and fairly heard in a meaningful manner. Rulings, opinions, orders must so reflect.

"CLASS"

There is a definite "class" of persons affected and/or in jeopardy from the facts of the instant case from my ordeal of injury, legal representation, litigation-trial, adversary attorney, system of justice, pro se, and the repercussions and aftermath following.

OBSTRUCTION OF
JUSTICE - 3

(1) Litigation permeated with untruth and deceit of both plaintiff and defense attorneys. Justice obstructed.

(2) Two summary judgment proceedings granted contrary to law, rule, fact, evidence. Obstruction of justice denial of right to trial.

(3) Meaningless appeal evading, avoiding, ignoring and estopping justice.

The Complaint record will be quoted for both defendants, because there is one identical complaint for both. The two summary judgments and two appeals were made separately and must be separately referenced.

Complaint: DEF-ONE CP FILE #1 p 697: (9346)
DEF-TWO CP FILE #1 p 425: (8935)

(DEF-ONE & TWO) THE COMPLAINT

Paragraph 3.5/5-7: "I have been denied a fair trial to be fully and fairly heard in a meaningful manner and a "day in court" in honesty and truth."

Par 3/7/12-13: "I allege corruption of legal proceedings in the sanctity of a courtroom by quasi judicial officers of the court."

Para 3.8/15: "I allege an improper purpose in trial."

Para 1.59/28-30: "The attorney Oath and Code of Responsibility protects the public, preserves the Constitution, provides for a fair trial, and prevails for justice."

Para 1.74/28-30: "All acts and omissions and legal wrongs harm the client solely relying upon her attorney to protect."

Para 2.58/30-32: "I ask in damages that in damages the County of King in the State of Washington be reimbursed for trial costs and charges . . ."

COMPLAINT (DEF-ONE and TWO)

Paragraph 3.3/11-18: "I, Beatrice Koker, plaintiff, allege with Specific Examples with Proof that Cause of Action I and Cause of Action II is denial of Civil Rights from corruption in a trial by the attorneys, both plaintiff and defense, denial of PROCEDURAL DUE PROCESS and DENIAL OF EQUAL PROTECTION from an unfair trial, conspiracy, obstruction of justice under the law in the Constitution of the State of Washington and the United States Constitution."

Para 2.8/20-28: "The judge of trial court did not know of the deceit, the misrepresentation and suppression of fact, the judge did not know the jury was being misled. The judge could not know of the lack of good faith, fraudulent concealment, fraudulent conduct, fraud of the court, and the denial of equal protection under the law, the obstruction of justice, the unfair trial, and dishonesty in overt acts, collusion, conspiracy and violating Attorney Oath and Code of Professional Responsibility."

Para 2.16/12-14: "To find discovery of proof of deceit in a trial by attorneys, not expecting deceit from trusted counsels, is to suffer trauma."

Para 1.12/ 26-27: "Beatrice Koker trusting in her attorney made an easy target to deceive."

Federal Question

COMPLAINT (DEF-ONE and TWO)

Para 3.5/1-5: "I allege physical aggrava-
tion and mental repercussions and
emotional reactions and pain and
suffering to discover a court
proceeding corrupt, so alien to
the promises and concept and pre-
cautions afforded a fair trial
under the State Constitution and
Federal Constitution."

FEDERAL QUESTION
FROM RECORD OF
DEF-ONE ONLY

CP FILE #107 p 415: My numbered Page 21/27-32:

"A trial must be fully and fairly
heard and if the attorneys conceal,
suppress, misrepresent as was done
in the trial of 1976, then there is
no fully and fairly heard trial be-
cause of deceit, lies to the judge
and jury. The only redress and
remedy is through those who have
committed the wrongs. Here. Now."

p 75/20-22: "The fact remains, due to
the acts, omissions and legal wrongs
of both Frederick V. Betts and
Kenneth L. LeMaster, this plaintiff
is denied redress and remedy to
compensate."

p 55/17-19: "A material fact question
is: "WHY?" Was it negligence?
Was it conspiracy and collusion?
The trier of the fact must be called
to decide."

FROM THE COMPLAINT
BOTH DEF-ONE AND TWO

Paragraph 1.13/29-32: "The stringent rules of the legal profession in the Oath of Attorney and Code of Professional Responsibility protects unsuspecting clients unless the attorney disregards his Oath and the CPR and conceals it."

Para 3.6/8-10: "I allege deprivation of fidelity from attorneys in the capacity of a client, a litigant, a citizen, a member of the public that an attorney is sworn to protect."

Para 4.8/4-11: "The attorneys are in a position of knowledge and law and superiority over a plaintiff-litigant-client in court and proceedings and all litigation. The honesty, integrity, honor, dedication, knowledge, responsibility of the attorneys and the court is all that insures a fair trial, and when there is deceit from the attorneys the very protectors of fairness the "day in court" is destroyed and the mental and emotional, and aggravated distress physically over this fact is evident."

Para 1.8/28-31: "As a client of Mr. Betts, I was totally uninformed in law and proceedings and did not know of the wrongdoing before, during or even after trial until as pro se, searching for "errors for appeal" wrongful acts emerged with proof from record."

Para 1.12/26-27: "Beatrice Koker trusting in her attorney made an easy target to deceive."

FROM THE COMPLAINT
BOTH DEF-ONE AND TWO

Para 1.82//8-10: "I had no knowledge of the law or proceedings of the court nor the duties of an attorney at time of trial. The CPR protects even the unsuspecting."

Para 4.16/18-20: "Forced to be pro se because of the wrongdoings of these educated, knowledgeable men who had a duty in the court and failed."

Para 4.14/8-12: "A pro se struggle for justice is hades on earth. I allege a vicious circle of torment left to me legally by deeds and misdeeds in having to learn the outer edge of law to survive the inner edge of deceit as in Action I II III."

Para 1.11/16-22: "I allege intense emotional distress of a panic-search for counsel for appeal, and being COMPELLED to file an appeal without counsel, pro se July 29, 1976. I allege nearly three years of legal physical suffering, legal mental suffering, and legal emotional suffering searching for the truth of wrongdoing in an unfair trial AND FINDING IT, EXPOSING UNTRUTH, AND SUFFERING TRAUMA AND SHOCK."

Para 4.16/17-19: "There was shock and tears to pick a book at random and find Frederick V. Betts named as "Defendant" before the Supreme Court."

Comment: A jury found bad faith and negligence against Frederick V. Betts.
THIS CASE RELEVANT TO CASE
AT BAR.

WHERE AND HOW
FEDERAL QUESTION RAISED
APPEAL #9346-1-I
Def-One

Petition For Review:
P 15 First Paragraph:

"Petitioner challenges the constitutionality of holding that attorneys are not "under color of law," on the grounds the Washington State Bar Act RCW 2.48 statute created the Washington Bar Association as an "Agency" of the state and the attorneys are compulsory members of that "agency" or they could not practice law." RCW 2.48.010:

Petition For Review:
p 24 - First Two Para:

(1) "There are two Federal Questions:

(1) The Constitution promises a trial that is fully and fairly heard in a meaningful manner. ARMSTRONG V MANZO 380 US 545, 552 The trial of 1976 is a Federal Question in denial of Constitutional trial and obstruction of justice from lies, deceit, "bad faith" and all other that prevented that trial from being fully and fairly heard in a meaningful manner even to the extent of deliberately and intentionally misrepresentation and suppression of material facts to injuries."

(2) "The second Federal Question regards the State Bar Act RCW 2.48 BY THE STATE OF WASHINGTON creating an

"agency of the state" called the Washington Bar Association. Attorneys are compulsory members of that agency. I challenge the Constitutionality of excluding attorneys from liability "under color of law."

THE SAME QUESTIONS PRESENTED THE
SAME WAY IN APPEAL #8935-8-I #2:
IN THE PETITION FOR REVIEW - p
17 and 20:

VOLUMINOUS

The references to the complaint which relate to both defendants set forth herein. The voluminous accounts will be set forth in the appendix as follows:

(APPENDIX A-61 Through A-72: FEDERAL QUESTION
(APPEAL #9346-1-I: DEF-ONE #1:
(APPENDIX A-73 Through A-78: THE CLASS

(APPENDIX B-41 Through B-54: FEDERAL QUESTION
(APPEAL #8935-8-I: DEF-TWO #2:
(APPENDIX B-55 Through B-62:

These quotations from CP, ORAL ARGUMENT, APPEAL, CIVIL APPEAL STATEMENT AND ANSWER, OPENING AND REPLY BRIEFS. ALL LEVELS.

RECONSIDERATION
REHEARING

The State of Washington made the re-hearing rule "discretionary" with the court. In the case at bar, within 10 days after the petition for review was denied, I made a motion for reconsideration with the xeroxing from the newest Appellate reference: Filed November 18, 1982:

RECONSIDERATION OF COURT OF APPEALS DECISION

See Reconsideration of Appellate Court Decision. c - 2

RECONSIDERATION OF SUPREME COURT DECISION

See Reconsideration of Appellate Court Decision.

On p 15/13-15 this petitioner said

"Courts are instituted with a duty to see that the right of every citizen to have his day in court, as well as fundamental rights, are maintained inviolate."

ARTICLE III §1 Note 121:

p 16/6-8:

"Action of state courts and state judicial officers in their official capacities is "state action" within provision of this clause." CONSTITUTION AMENDMENT 14
Note 160:

Much Constitutional Law was quoted.

And I awaited their discretionary ruling.

A special journey to Olympia to file the motion for reconsideration-rehearing was made on the importance of this document. The day after the personal filing, the mandate was issued from the Court of Appeals Div I.

A motion was made to the Supreme Court after receiving word from their Clerk that my motion was being filed with no further action. It was an absolute right to be determined and my motion was there before the mandate was issued.

Another motion to the court appealing the Clerk's ruling to the Supreme Court Justices. The motion was accepted to be heard January 7, 1983 at which time they affirmed the Clerk's ruling and denied me the absolute right to be heard with a discretionary yes or no.

Beatrice Koker presented Art 4, §2 of the Constitution of the State of Washington. EVADING AND INJUSTICE AND DENIAL.

REASONS FOR GRANTING THE WRIT
AND WHY THE QUESTIONS ARE SO
SUBSTANTIAL

There is no racial issue, because I
am not colored. No fishing nor Indian
rights involved - - I do not fish and am not
Indian. The anti-trust is not possible in
the league of impoverishment. No banking,
no utilities, no communications issues.
I am too old for the abortion controversy.

You have at your doorstep a precedent
that should and may change the law of the
land to include attorneys under color of
law for the purpose there shall be no
consternation among legal professionals
over this fact, if their intent is good-
faith and truth and honor and integrity.

The late Honorable Mr. Justice
Jackson, concurring in Hickman v Taylor
329 U.S. 514, 515 says:

"But it is too often overlooked
that the lawyers and the law office
are indispensable parts of our admin-
istration of justice . . ."

The Constitutional Promises of a trial fully and fairly heard in a meaningful manner would also respond to banishment of temptation to attorneys to do wrong, and inundate the Courts with old-fashioned constitutional format of "the truth, the whole truth, and nothing but the truth."

14 FPD 2d 621 Wests Key 314
CONSTITUTIONAL LAW

"Right to confront and cross-examine witnesses is fundamental aspect of procedural due process." Jenkins v McKeithen, 89 S Ct 1843, 395 U.S. 411, 23 L Ed 2d 404, Rehearing Denied 90 S Ct 35, 396 U.S. 869, 24 L Ed 2d 123 (1969):

"Duties imposed upon the Supreme Court, the Court of Appeals and Superior Courts under the Constitution include, among others, the fair and impartial administration of justice and the duty to see that justice is done in cases that come before them." RCWA CONSTITUTION Art. 4, §1; Art 4 §30, as amended Amend. 50 Iverson v Marine Bancorp- oration 517 P 2d 197, 83 Wash 2d 163 (1973):

A meaningless appeal, a denied summary judgment on three-fourths of the case, refusal of review has left a shambles of justice and a mire of injustice and an agony to bear.

The summary judgment denied in one cause - legal malpractice. To not appeal and go to trial with one-fourth of the case is "concealment of concealment" by court order of the wrongful acts, omissions and legal wrongs. I was faced with either asserting a Constitutional Claim and appeal or abetting the wrong of adversaries and the order of the court. I APPEALED.

JURISDICTION: USCA AMENDMENT 1:

"Standing should be found whenever a plaintiff is faced with a choice of either asserting a Constitutional claim or complying with and abetting a discriminatory policy."

Wilson v Chancellor 418 F Supp 1358

This petitioner comes to you with the result of a meaningless appeal, and evading and avoiding proper disposition of this case.

28 USCA RULE 56 and State Rule CR 56

go to great lengths to protect the non-moving party, so as not to deprive a right by law. Summary judgment is a lethal weapon in the hands of those who misuse it, and courts must be mindful of the aims and targets and beware of overkill in the use of this rule. No court calendars can be cleared by misusing summary judgment for that purpose. Summary judgment remedy is extreme and not to be used as a substitute for a trial and must be granted cautiously in order to preserve substantive rights and used sparingly because a party's right to present a case to a jury can be cut off.

THE BURDEN OF PROOF MUST BE KEPT!

II Citation II CONSTITUTION OF THE UNITED STATES AMENDMENT 14 Note 1036 p 793

"A ruling based on evidence which a party has not been allowed to confront or rebut is one which denies due process."
Carter v Morehouse Parish School Bd.
C. A. La (1971) 441 F 2d 380, Cert Denied 92 S. Ct. 201, 404 U. S. 880.
30 L Ed 2d 161:

JUSTICE IS DEAF OR NO ONE LISTENS

The difference between the words of authority and law and acts of the court in the case at bar, is a prime example of "forked tongue." The rehearing, for example:

UNITED STATES CONSTITUTION West's
Pacific Digest Vol 8 p 421 XII West's
Key 321 Constitutional Guaranties

"Defendants "day in court" is not complete until his motion for rehearing before the Supreme Court is determined." State v Pudman
177 P 2d 376m 65 Ariz 197:

MODERN CONSTITUTIONAL LAW §7 p 14
"ONE'S DAY IN COURT"

"The United States Supreme Court has referred to "the right to be heard" as "one of the most fundamental requisites of due process." "Again, it has stated: A fundamental requirement of due process is the opportunity to be heard." Armstrong v Manzo (1965) 380 U.S. 545, 14 L Ed2d 62, 85 S Ct 1187:

The denial of rehearing is an independent ground for review under this court's power to supervise - -" 345 U.S. 247, 260:

EULOGY

The jeopardy has
already begun and
I am a court orphan
because of it.

I am a pro se
(legal leper)
because of the
court jeopardy.

I am without a
right to a trial
and no redress
nor remedy nor
restitution
because of court
proceedings,
wrongfully using
summary judgment
and state evading,
and avoiding.

To bury this case
at bar demands
resurrection.

#

- 60 -

Court system in jeopardy, Burger says

P-I News Services

NEW YORK — Chief Justice Warren Burger said yesterday that unless drastic changes are made, the American court system "may literally break down before the end of this century."

Burger said that the courts are being swamped with cases and that new approaches are needed on such fundamental aspects of the judicial process as the structure and administration of the federal court system

and the manner in which cases are handled in court.

"We have reached the point where our systems of justice — both state and federal — may literally break down before the end of this century, notwithstanding the great increase in the number of judges and the large infusion of court administrators," the chief justice said.

Burger made his remarks to a law-school sponsored dinner in New York

City.

Burger cautioned that the "workings of courts are falling into disrepair in spite of many improvements," adding that courts face continually mounting workloads.

"In the face of these constantly rising hydraulic pressures on the courts, the time has come to take a fresh, hard look," the chief justice said. "It is time to embark on a comprehensive study of the judicial pro-

cess."

Burger frequently has spoken out on the need for reforms of the legal system, and has proposed measures such as a greater use of arbitration to relieve clogged courts.

Yesterday's speech to a dinner sponsored by New York University and the Institute of Judicial Administration, however, sounded a particularly severe warning about the legal system.

CONCLUSION

The judicial process rebukes untruth.

Deceiving the court is treble damages.

. Officers ⇨ 116

Title of office, quasi-judicial or even judicial, does not of itself immunize officer from responsibility for unlawful acts which cannot be said to constitute integral part of judicial process.

Petitioners have taken this writ and/or appeal in good faith. Petitioner respectfully asks the United States Supreme Court to reverse all orders and rulings of the state courts of Washington, and restore this case to a trial fully and fairly heard in a meaningful manner, or in the alternative to settlement out of court to the justice of the damages. I ask forgiveness for the ineptness of presentation but ask you to weigh the sincerity.

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Seattle, Wn 98164
(206) 292-9988

Def #2 Atty:
William Helsell
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Respectfully submitted,
Beatrice E. Koker
Beatrice E. Koker, *Pro Se*
939 N. 105th St
Seattle, Washington
(206) 783-6998

Erich Koker
Erich Koker *Pro Se*

NO. 82-1947

FILED

AUG 17 1983

ALEXANDER L. STEVA
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

ERICH KOKER and BEATRICE E.
KOKER, husband and wife, APPELLANTS,

Versus

FREDERICK V. BETTS and JANE DOE BETTS,
his wife, and their marital community,
and SKEEL, McKELVY, HENKE, EVANSON & BETTS,
Law Firm Of Frederick V. Betts,

APPELLEES,

AND

KENNETH L. LeMASTER and JANE DOE LeMASTER,
his wife, and their marital community, and
SAFECO INSURANCE COMPANY OF AMERICA, AND
GENERAL INSURANCE COMPANY OF AMERICA, and
FIRST NATIONAL INSURANCE COMPANY OF AMERICA.

APPELLEES.

ON APPEAL FROM THE COURT OF APPEALS
DIVISION I AND THE SUPREME COURT OF
THE STATE OF WASHINGTON

SUPPLEMENTARY BRIEF

INTERVENING MATTER

ORAL ARGUMENT TAPES ERASED

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THE APPEARANCE IS OBVIOUS. THE COURTS
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IN THE

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OCTOBER TERM, 1982

ERICH KOKER and BEATRICE E.
KOKER, husband and wife, APPELLANTS,

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APPELLERS,

AND

KENNETH L. LeMASTER, ET UX, ET AL,
APPELLEES.

ON APPEAL FROM THE COURT OF APPEALS
DIVISION I AND THE SUPREME COURT OF
THE STATE OF WASHINGTON

INTERVENING MATTER: RECORD ON APPEAL:
ORAL ARGUMENT TAPES
DELIBERATELY ERASED

SUPPLEMENTARY
BRIEF

Supplementary Brief pursuant to Rule 16.6
and Rule 33. There is an intervening matter
not available at the appellants' last filing.
RE: ORAL ARGUMENT TAPES DELIBERATELY ERASED.

COMMENTS FROM THE BENCH
AT ORAL ARGUMENT

Two 14" x 22" placards were used in oral argument by Beatrice Koker. One as a visual demonstration for the four parts of the case at bar and the relationship of the defendants to one another and to the case. The second placard was used to show the conflict of rulings of the court and contrary to law.

After the explanation of placard one, pointing to the parts of the case in their order and the purpose of each, Honorable Judge Swanson explained what the court understood the four parts to be and the position of the defendants to one another.

PERFECTION

This Honorable Judge explained my case perfectly and that explanation was stated as the understanding of the panel of Judges at oral argument. This is imperative importance because the tapes are erased and you will-not know from the record the discrepancy between oral argument and the opinions per curiam.

QUESTION: Why would the opinions handed down be so foreign and alien and conflicting with the perfect understanding of the Court of Appeals as per the oral argument? Which judge on that panel wrote the opinions? Was it a judge from outside the panel? Or a Commissioner? That information withheld from me, as well as a copy of the record order, as well as refusal of copy of oral argument tapes.

In Wests Key 824 - Oral Argument 15 Wests
General Digest 2. QUOTE:

Cal 1982. "Right to oral argument would be empty right if it did not encompass right to have one's case decided by justices who heard argument; thus, permitting justice who has not heard oral argument to participate in decision of case would effectively deny litigants their right to oral argument on appeal." MOLES V REGENTS OF UNIVERSITY OF CALIFORNIA 854 P 2d 740, 187 Cal Rptr 557, 32 C 3d 867:

"There is no authority, constitutional or otherwise, granting presiding judge of Court of Appeal power to substitute one judge of panel for

"another after oral argument; therefore, where presiding judge of Court of Appeal substituted one judge for another after oral argument in appeal, Court of Appeals decision affirming trial court determination is invalid." Id.

QUESTION: Are the panel of Judges at oral argument "responsible for the opinions" even if someone outside the panel of judges wrote the opinions?

SEEKING UNITED STATES
SUPREME COURT SUPERVISION

Supervision of the United States Supreme Court and invoking their jurisdiction in this appeal in defense of Beatrice Koker's rights. The state appellate structure has so departed from the accepted and usual course of judicial proceedings, and protection of records, and preservation entire records, and have sanctioned such a departure by the lower court in contrary to law rulings, as to call for the exercise of the supervision and justice from the highest court in the land.

II

FOUR MONTHS PREPARATION FOR ORAL ARGUMENT

Oral argument is imperative to an appeal, an opinion shared by many learned men. Nearly forty years ago Roscoe Pound wrote:

"One of the most serious features of appellate practice in the United States is the decadence of oral argument." R. POUND, APPELLATE PROCEDURE IN CIVIL CASES 369 (1941):

** Mr. Justice Brennan said:

"Oral argument is the absolutely indispensable ingredient of appellate advocacy....Often my whole notion of what a case is about crystallizes at oral argument." W. BRENNAN, HARVARD LAW SCHOOL OCCASIONAL PAMPHLET NO. 9 page 22 and 23 (1967):

** Justice Jackson wrote:

"I think the Justice would answer unanimously that now, as traditionally, they rely heavily on oral presentations. Most of them form at least a tentative conclusion from it in a large percentage of cases." Justice JACKSON, ADVOCACY BEFORE THE SUPREME COURT: SUGGESTIONS FOR EFFECTIVE CASE PRESENTATIONS, 37 A.B.A.J. 801 (1951):

** John Appleman pointedly declared in

J. APPLEMAN, SUCCESSFUL APPELLATE TECHNIQUES

p 996(1953):

"The fact of the matter--the brutal hard fact of the matter--is that cases frequently are won and lost on oral argument"

** Harlan, WHAT PART DOES THE ORAL ARGUMENT PLAY IN THE CONDUCT OF AN APPEAL, 41 CORNELL

L." 6 (1955):

"I should like to leave with you . . . the thought that your oral argument on appeal is perhaps the most effective weapon you have got if you will give it the time and attention it deserves."

** Harris Steinberg states bluntly in

MILLER, ORAL ARGUMENT, 9 D.C.B.A.J. 196 (1942):

"The longer I sit on the bench the more convinced I become that a lawyer should never submit a case without oral argument."

Honorable Herbert A. Swanson, Court of Appeals Division I and a judge on the panel of my oral argument on appeal, is on the editorial board of the WASHINGTON APPELLATE

HANDBOOK published January 5, 1980. Chapter 20 was diligently studied and practiced for four months in preparation for my oral argument.

WHAT WAS IN THE ERASED TAPES?
WHY ARE THESE TAPES SO IMPORTANT?
WHAT IS THE RELEVANCY?

The oral argument proceedings tapes hold blunt, pointed, penetrating questions from the bench. A federal question was presented.

Those tapes are directly related to the persistent motions for disclosure because the format and aura and contents of oral argument is so foreign and alien to the opinions handed down, it is impossible to associate one with the other.

The erased tapes are important and relevant to the premature mandate, a distasteful encounter regarding access to one folder of one appeal, files out of order, original document missing, original records released in a pending action, and to an adversary defendant. The Clerk of the Court of Appeals is aware of all.

III

PATTERN OF NEGLECT OF RECORDS ON APPEAL

Erasure of the oral argument tapes is related to other non-protection of my records. These oral argument tapes are records because of the nature of the proceeding and penetrating questions from the bench on the subject of conspiracy and collusion et al Cause II.

In 1979 the same Court of Appeals released my original records in a pending court case and did so knowingly. Those records given to a litigant (now Appellee-Betts) were out of the Appellate Court 46 days with 12 extra days granted. APPENDIX A-1 and A-2:

ORIGINAL RECORDS

28 USCA 1738 Note 25 indicates that any court receiving a certified record does not even have to ask if the Clerk of the Supreme Court or Court of Appeals has had custody of the original files since it was filed. That also means files not released unless court so orders. My original records given at will.

IV

MEANINGLESS APPEAL
MOTION FOR DISCLOSURE
DENIED

A motion for disclosure regarding oral argument and who wrote the opinions, and for a copy of the orders denied in all state appellate structure.

ORAL ARGUMENT TAPE COPY
ALSO REFUSED BY SAME COURT

From March 24, 1982 until November of that year, I asked three times for a copy of the oral argument tapes and was refused each time by the Court of Appeals Division I.

The State Supreme Court agreed to make a copy, but could not obtain the tapes. The search by that court has continued from December 1982 until the letter of July 14, 1983. Notification from the State Supreme Court that the oral argument tapes have been erased by the Court of Appeals.

Why would the Court of Appeals withhold copies of records, and erase oral argument tape deliberately knowing it is being sought, when

all have sworn to uphold the Constitution? The Constitution says the common-law right to inspect and copy judicial records is firmly established and that right applies to tapes as well as documents. USCA CONSTITUTION AMENDMENT 1 5 West's General Digest 968 Records II. Public Access: RCW 42.17:

Public Disclosure in 1641 #48 from "Colonial Laws of Massachusetts": Published under supervision of William H. Whitmore, Record Commissioner City Council of Boston.

"Every Inhabitant of the Country shall have free libertie to search and veewe any Rooles, Records, or Regesters of any Court or office except the Councell, And to have a transcript or exemplification thereof written examined, and signed by the hand of the officer of the office paying the appointed fees therefore."

This was before State Courts in seeking disclosure. Neither the Constitution nor Colonial Laws based upon the Constitution have moved the State Courts, low or high, to protect the rights of Beatrice Koker, Citizen

Pro Se, leaving a wake of meaningless appeals.

In the Jurisdictional Statement APPENDIX

C-41 it says:

"The evading, avoiding misunderstanding, shunning of the errors and issues on appeal, was so appalling to this petitioner that I could-not accept that a judge wrote them."

"The ruling was per curiam and had the opinion apprised the thrust of review, I would not have questioned it. As it was, I asked for the author of the opinions under RCW 42.17 Public Disclosure Act and was refused all the way to State Supreme Court."

Under that act, final opinions, as well as orders made in adjudication of cases are available to the public for copies for a fee.

FROM THE RECORD

The Commissioner of the State Supreme Court denied my motion for disclosure. I appealed his ruling to the Judges September 22, 1982. Excerpts quoted: APPENDIX H-1 Thru H-3

CONFLICT. I am bereft of rights in Washington State Courts in meaningless appeals.

PRE-MANDATE
MANDATE PREMATURE

After receiving a letter calling my motion reconsideration-rehearing POST mandate, I wrote a correction to the State Supreme Court. The motion was to be heard January 7, 1983:
Quoting page 1:

"The letter states petitioner Beatrice Koker's motions were POST-Mandate. This is error and must be corrected to read as PRE-Mandate, as the mandate was issued AFTER the Motion For Reconsideration."

Erasure of tapes directly involved with the mandate as per letter infra. Excerpts from my motion to correct to pre-mandate will be found APPENDIX E-1 Through E-6:

Costs not paid. Particulars page 30 Jurisdictional Statement. In BRAZZEL V MURRAY 472 SW 2d 814: Tex Civ App 1971, it says no one is entitled to take out mandate or have it filed, until costs have been paid.

VI

MOTION TO REMOVE RECORDS
FROM COURT OF APPEALS DIV I

This is a matter relevant to erasure of oral argument tapes also a part of the record. There is threadbare protection for my records, and insult added to injury.

The docket sheet listed a letter received by the State Supreme Court from a law student in 1980, interested in my case. I had-not received a copy of that letter. There is always search for counsel and this girl may by now be an attorney.

SIMPLE POLITE REQUEST

The girl at the desk was asked for one folder of one appeal and she curtly replied she would bring all the files in the case at bar. I asked her please not to bring all the files when only one folder of one appeal was needed and identified which folder.

The girl brought all the files and threw-dumped them over a railing onto the floor by my feet in utter disdain and derision.

The girl then went into the Clerk's office which appeared empty. The windows of the office uncurtained and parallel to windows of building exterior, reflected as a mirror.

I witnessed reflection scenes of the girl gesturing the file-flinging and laughing heartily, accompanied in laughter by the Clerk of the Court. I am crippled, using a leg brace and cane and could not pick up my records.

The girl would-not have dared to commit this humiliation and rudeness in such a deliberate act to a citizen unless she knew in advance it would-not jeopardize her job security.

**MOTION FOLLOWED TO REMOVE
RECORDS AND WHY**

I asked the Court in motion to take judicial notice that the motion document is in affidavit under penalty of perjury and if anyone denied the facts I presented, that there be further truth tests for all.

VII

COURT'S REPLY TO MOTION TO REMOVE RECORDS

The Clerk of the Court of Appeals Div I answered the motion even though no one but the Judge could rule. No one denied the truth of my motion.

Mr. Richard D. Taylor, the Clerk, is a very dignified, intelligent gentleman and I did-not want to see him so demeaned to apologize and offer excuses. APPENDIX B-1 and B-2:

I appealed to Honorable Presiding Judge Andersen again, to remove the records and eliminate denial of my access to the courts and records. The underlying attitude shall-not change. APPENDIX C-1 Through C-7:

There were physical effects to me in the aftermath of the humiliation and anguish felt.

NO DIRECT REPLY TO THE MOTION

The records removed from the Appellate court and sent, out of order, documents missing, tapes erased. Letter notifying APPENDIX D-1:

Please take note the Court of Appeals in Seattle, is the only uncourtlike treatment encountered in seven years as a pro se. It hurts that Mr. Taylor is anti-Beatrice. The attorneys made me a pro se. Others respect me.

EXAMPLE

Mr. Robert A. Keene formerly before retirement worked closely to the Mayor of Seattle then. The following reference is from him.

July 23, 1974

"TO WHOM IT MAY CONCERN:

It has been my privilege to know Mrs. Erich (Beatrice) Koker for a number of years.

I hold her in the highest regard as a highly intelligent person of unassailable integrity, honesty, and character, to which should be added "courage."

Should detail or example be desired, the reader is invited to communicate directly with the undersigned."

/s/

Robert A. Keene
6242 36th Avenue N.E.
Seattle, Washington

(206)
523-1188

IX

INTERVENING MATTER

On June 28, 1983 a letter was sent to Honorable Reginald Shriver for verification a document is missing from the file and asked if the oral argument tapes he has been looking for SINCE DECEMBER 1982 had been found.

APPENDIX F-1 Through F-3:

The answer is verification the document is not in the record file and that the tapes of oral argument removed from the record at the time of mandate and erased. APPENDIX G-1

Mr. Taylor, Clerk of Court of Appeals Div I where tapes were erased, knew the pre-mandate, knew the United States Court Appeal. The Clerk of the State Supreme Court expected the tapes to be in the record sent to that court on my motion to remove records.

FEDERAL QUESTIONS

FEDERAL QUESTIONS III AND VI are applicable. "Meaningless appeal" says it all.

Erasure of oral argument under the circumstances of the case at bar is another unjust act in the already meaningless appeal.

QUESTION: Why would a Court refuse me a copy of my own tapes as early as the day of oral argument March 24, 1982? Why were the oral argument tapes withheld from the record sent to the State Supreme Court for petition for review? When discrepancy between oral argument and opinions is questioned and disclosure denied- - WHY? Who is the author of those opinions? Why was the order refused me? Why are the tapes erased? This, you see, is not just an isolated happening, but involves all other relevant denial of absolute rights to a meaningful appeal.

RELEVANCE

Oral arguments as to facts and law could be reconstructed from the record, but this oral argument had potent questions from the bench not in the record. Opinions that could-
not evolve from that oral argument.

The mandate is a premature action. Even worse, the mandate is used as an excuse to erase oral argument tapes. The state appellate court will only stay issuance of the mandate pending review by the United States Supreme Court in a case in which the death penalty has been imposed. RAP 12.6.

Or App 1982. "No mandate issues from the Court of Appeals on a case pending for review by the Supreme Court until the Supreme Court has acted on the case and the **TIME FOR PETITION FOR REHEARING IN THAT COURT HAS EXPIRED.**" (Emphasis Mine)

Matter of Compensation of Castro
652 P 2d 1286, 60 Or App 112:

Appellants Kokers respectfully ask the United States Supreme Court to apply this substantial intervening matter of erasing oral argument tapes, as another reason of substance for granting jurisdiction to the appellants, in conjunction with all other matters herein and added to the matters of

CONCLUSION

the Jurisdictional Statement and APPENDIX A B C and Appellants' Reply Brief opposing the motion to dismiss or affirm. And record.

To grant jurisdiction to Appellants Koker is justice at the same time to both appellees as a chance of justice for us all eventually before the trier in a Constitutional trial fully and fairly heard in a meaningful manner. Or in the alternative, settlement out of court.

The intervening matter of this Supplemental Brief is, under the circumstances of the case at bar, a convincing additional element of the necessity of intervention of the United States Supreme Court.

Subscribed and
sworn to before
me this 26th
day of July
1982

James J. McArthur
A Notary Public
in and for the State of Washington
Residing at Seattle
Affidavit of Beatrice Koker

Respectfully submitted,

Beatrice E. Koker

Beatrice E. Koker, Pro Se

Erich Koker

Erich Koker

939 North 105th Street
Seattle, Washington 98133
(206) 783-6998

Certificate of Service

I, Beatrice Koker do hereby
certify that three copies
each of the Supplementary
Brief and Appendix thereto
have been served,
personal service,
July 28, 1983 on the
following:

Bette, Patterson and Mines
Ms. Ingrid Hansen
900 - Fourth Avenue
40 th Floor
Seattle, Washington 98164
and

Helsell, Hetterman, Martin,
Todd & Hokanson
Ms. Cochran
Post Office Box 21846
Seattle, Washington 98111

NO. 82-1947

Office: Supreme Court
FILED
AUG 17 1983
ALEXANDER L. STEVENS
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

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Versus

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his wife, and their marital community,
and SKEEL, McKELVY, HENKE, EVANSON & BETTS,
Law Firm Of Frederick V. Betts,

APPELLEES,

AND

KENNETH L. LeMASTER and JANE DOE LeMASTER,
his wife, and their marital community, and
SAFECO INSURANCE COMPANY OF AMERICA, AND
GENERAL INSURANCE COMPANY OF AMERICA, and
FIRST NATIONAL INSURANCE COMPANY OF AMERICA.

APPELLEES.

ON APPEAL FROM THE COURT OF APPEALS
DIVISION I AND THE SUPREME COURT OF
THE STATE OF WASHINGTON

Appendix

SUPPLEMENTARY BRIEF

INTERVENING MATTER

ORAL ARGUMENT TAPES ERASED

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(1979)

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NO-ANSWER TO ME BUT COPY OF D-1: D
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OPINIONS ALIEN TO ONE ANOTHER H-3:

ORIGINAL RECORDS RELEASED

Date	File and Proceedings
7/27/79	Vols. I-V of VRP checked out to Frederick V. Betts, to be returned by Sept. 6, 1979.
8/9/79	Request from Beatrice E. Koker for Certification of Record/Transmittal of Record
8/21/79	Mrs. Koker advised that certification of record not necessary at this time

Affidavit

I do certify by affidavit this copy of Docket Card obtained from The Court of Appeals Division I - Seattle, Washington on September 10, 1979, at .15¢ per copy by Plaintiff/Appellant/Petitioner, pro se.

(This is a xeroxed copy of a xeroxed copy)
Last page only)

Beatrice E. Koker
939 N. 105th St. Seattle, WA 98108

Date	File and Proceedings
7/27/79	Vols. I-V of VRP checked out to Frederick V. Betts, to be returned by Sept. 6, 1979. <i>Entire file checked out 9-1-79.</i>
8/9/79	Request from Beatrice E. Koker for Certification of Record/Transmittal of Record
8/21/79	Mrs. Koker advised that certification of record not necessary at this time
9/11/79	Per phone conversation, Mr. Betts extended return date on file to September 24, 1979 (vb)
9/12/79	Pouches returned by Mr. Betts.

Affidavit:

I do certify by affidavit this copy of Docket Card was obtained by Beatrice Koker, Plaintiff/Appellant/Petitioner, pro se, from The Court of Appeals Division I - Seattle, Washington on September 12, 1979.

(This is a xeroxed copy of a xeroxed copy) A-1
C.Y. + -

THE COURT OF APPEALS
of the
STATE OF WASHINGTON

Seattle
98101

February 23, 1983

Ms. Beatrice E. Koker
939 North 105th St.
Seattle, WA 98133

Dear Ms. Koker:

This is in response to your Motion for Removal of Records received by this court on February 14, 1983.

It is this court's policy to serve the public and not be of a disservice. We stand corrected and sorry for the manner in which you were treated.

This office has had to lay everyone off one day a month without pay in order to meet the reduced budget. The workload on everyone has increased and with less time to complete this workload. We lost sight of our first responsibility to the public which is service.

APPENDIX

B-1

Your files have been mandated and, therefore, the files were moved to our stored file area. In order for this office to better serve you and your need to review stored files, would you call or send a letter requesting a specific file to be at the front desk for your review on a date certain. We cannot review a file to see if certain pleadings are filed, so we must request that you specify the file you wish to review.

We are looking forward to being able to regain your respect for our service."

Very truly yours,

/s/ _____

Richard D. Taylor
Clerk

RDT/ea

cc: Chief Judge Andersen

"Please feel free to call me directly if you need to."
(In longland)

APPENDIX B-2

Dated: EXCERPTS FROM ANSWER TO
March 3, MR. TAYLOR'S LETTER
1983 MOTION RAP 17.7 TO THE
PRESIDING JUDGE TO MOVE
RECORDS TO SUPREME COURT
STATE OF WASHINGTON

Page 2:

(a) The motion for removal of records from your court filed on February 14, 1983 was addressed specifically to Honorable Judge Andersen. I first called Honorable Judge Callow because he removed the records of Appeal #4916-I in 1979 after the original files were released to my adversary F. V. Betts for 46 days and there is a pending action. Honorable Judge Callow stated only the presiding judge could rule and that he was no longer presiding and to contact Honorable Judge Andersen. The motion was for Judge Andersen.

(b) Richard D. Taylor, Clerk of the Court of Appeals Division I ruled on the motion by letter and this is not proper under the circumstances and I ask Honorable Judge Andersen to rule.

Last Three Paragraphs page 3:

There is a question of PREMATURE MANDATE also on appeal to the United States Supreme Court. The issues surrounding this motion and appeal of motion are being evaded and avoided. In the first place, the clerk is not in a position to rule on this matter which is only for the presiding judge.

I have read Mr. Taylor's letter very carefully. It is not my intention to "correct" anyone, and at no time in my motion was there any issue except the reasons for the removal of the records from your court. The circumstance of February 3, 1983 is only a long line of bias and prejudice endured in the filing and judgments. Most were more subtle but equally detrimental.

Mr. Taylor states files cannot be reviewed to see if certain pleadings are filed. At no time have I ever asked for anyone to review a filed to see if something is filed, not in this court, and not in Superior Court.

And I have not deliberately gone to a file for that purpose myself.

Page 5 Last Three Paragraphs: All - p 6 & 7:

For some reason, Mr. Taylor is opposed to me personally and it makes me feel sorry that he was put in a position to think he must apologize or explain. There are no excuses and cannot accept those proffered.

May I remind the court that I entered the Court of Appeals at a little after 8:30 a.m. when I felt there would be no attorney needing help, but if there were, it is always my pattern to wait until last. There in the Court of appeals, and also in the Superior court in line at the filing window, at the xerox machine, at the window for the file access, in the law library I will seat myself on a bench by the door without a table so that attorneys will have access. Mr. Taylor's letter sounds as if I do none of these and he must ask me to make an appointment for

public records.

Please take judicial notice that I asked for one page out of one volume of one case to be xeroxed. The "workload on everyone" was so increased that she had time and energy to bring the entire files for two appeals and throw them at my feet, and then go into Mr. Taylor's office to reiterate with gestures the entire scene of humiliation and outrage and anguish to another.

I think it is beneath the dignity of the Clerk's position in the Court of Appeals to be placed in a position of apologizing. It is best by far to do nothing that demands an apology because apologies do not undo what has been done. There is no anger towards anyone. Mr. Taylor is of superior intelligence and it is beneath the dignity of his position as quasi officer of the court to do what he did Feb 3, 1983, but the last five years are also involved in the treatment I have received at the Court of Appeals

by your Clerk.

There is no way that I can make an appointment to see my own files. What the Clerk Mr. Taylor does not seem to understand is that there is no bus service to your Court, and that in the physical condition imposed upon me by a drinking driver and redress and remedy taken from me by attorneys, there is no planning from day to day what can be done. My life is lived the morning for the morning, the afternoon for the afternoon, and the evening for the evening. I have learned not to make plans that invariably are interrupted by pain or immobility.

Personal service on the Appellate Court and two defendants takes me all day, and then to bed in the first aid room for what is left. Then home to bed. Now I am supposed to make an appointment. No.

Why would Beatrice Koker come to the Court of Appeals Division I and ask for one specific

page of one specific file of one specific appeal? Because there is a never-ending search for counsel. From my own personal knowledge and experience, there is discrimination against the pro se's.

That one page may have opened the door to obtaining counsel, and I have not been able to pursue the possibility because of the repercussions and aftermath of relating back 5 years of this injustice perpetrated upon me in State Courts. Feb 3, 1983 reminder.

I am not a sue-happy litigious person. I have never been discourteous to Mr. Taylor, not matter what he says or does.

CONCLUSION: My motion of February 14, 1983 to remove the original records of Appeal 9346-1-I and Appeal 8935-8-I and to verify that Appeal 4916-I is still in the Supreme Court is the purpose of the motion, and now this appeal of that motion. Please.

Respectfully submitted,

/s/

Beatrice E. Koker, Pro Se
939 North 105th Street
Seattle, Washington 98133
783-6998

CC: Ingrid Hansen
Betts, Patterson Mines
900 4th Avenue 40th Fl
Seattle, Washington 98164

William A. Helsell
Helsell, Fetterman, Martin,
Todd & Hokanson
Post Office Box 21846
Seattle, Washington 98111

Supreme Court State of Washington
Temple of Justice
Olympia, Washington 98504

I do certify the above sent certified mail
restricted delivery first class and mailed
at the Post Office 3rd and Union Seattle, Wn
March 3, 1983

/s/
Beatrice E. Koker

The Court of Appeals
of the
State of Washington
Seattle
98101

April 26, 1983

The Hon. Reginald Shriver
Acting Clerk of Supre Court
Temple of Justice
Olympia, WA 98504

Dear Mr. Shriver:

Re: 8935-8-I, Koker v. Betts
9346-1-I, Koker v. Betts

Please find enclosed 3 files in no.
8935-8-I and 4 pouches in no. 9346-1-I
which are being forwarded to you pursuant
to appellant's request. Number 4916-I will
be forwarded as soon as the case is brought
from storage.

Please acknowledge receipt of the above
on the enclosed copy of this letter.

Very truly yours,

/s/
Richard D. Taylor
Clerk

APPENDIX D-1

P 4:

"An applicant shall not be deemed to have exhausted remedies available in courts of the state within the meaning of 28 USC §2254 if he has a right to raise by any available procedure the questions presented. This petitioner pleads and re-pleads for your help."

P 5: CONSTITUTIONAL TRIAL
 DENIED

"Procedural due process is opportunity to be heard at a meaningful time and in meaningful manner." CONSTITUTION AMENDMENT 14 PARKHAM V CORTESE
407 US 67, 32 L Ed 2d 556, 34 L Ed 2d 165:

p 8: CONSTITUTIONAL COURT

"All courts are Constitutional COURTS under Article III §1 Note 61. There are three essentials of a Constitutional Court:

"(a) Judge

(b) Attorneys, who are officers of the court

(c) Jury

"When any one of the three fails, there cannot be a trial fully and fairly heard in a meaningful manner to meet the credentials of a Constitutional trial." "Concealment of concealment is the verdict of granted summary judgment."

To Correct To Pre-Mandate APPENDIX E-1

"Petitioner Beatrice Koker has presented the question of state attorneys under state statute as being "under color of law." When the wrongdoing is of such a nature as in the case at bar it needs review . . ."

Page 10: THE VICTIM IS THE WITNESS

Page 11: THE WITNESS IS THE VICTIM

"I am a witness as a victim of permanent injuries, wearing a leg brace for life, feeling the pain, enduring the physical emotional, mental aftermath and anguish of a broken way of life. I am a victim and a witness to an unconstitutional trial, court proceedings since 1975 and 1976 overpowered by deceit, untruths, obstruction of justice, concealment by two attorneys. I am a pro se victim and witness to the struggle for redress and remedy and truth and honor and restitution by those who committed the wrong et ux, et al. I am a victim and witness to fighting this case alone without counsel since July 1976."

"First the driver of a car drinking and speeding, defective brakes, and going through an arterial stop sign, crippled me for life. Then my attorney betrayed me with another in the court proceedings and denied me redress and

remedy for the injuries. Then the courts upheld the evading by the defendants #1 and #2 by evading the appeal and evading petition for review. I am the victim and witness of all."

Page 11: RESPECTFULLY ASKING

(1) "Reconsideration of denial of petition for review. (2) Disregarding, vacating, settling aside, voiding, whatever the court deems necessary to deal with a premature mandate violating constitutional guarantees of a day in court through the last plea. (3) "A motion was before the Court of Appeals regarding costs and never ruled upon when the mandate was prematurely issued." (4) ERRATA: Change the letter of the Supreme Court Dated December 6, 1982 to read "PRE-MANDATE" motions. (5) Please rule on all pending motions before the Supreme Court of the State without any interference from a mandate premature and trying to cut off the final plea from petitioner."

"First, the disabled plaintiff has been deprived of his freedom of activity, in essence the primary freedom of them all. Think of the indignation and obvious injury that would result from an involuntary imprisonment. The victim is denied the capacity to go where he wants and do what he wishes. His life is held in suspension while this sub-human existence persists. Is the result any different when the "imprisonment" results from a physical disability? The results are the same. The victim leads a sub-human existence, unable to fulfill his potential, deprived of fundamental and substantial right."

Page 16: MOTION FOR RECONSIDERATION
REHEARING

"QUESTION IS THIS TRUE?

"From my own knowledge and experience I have heard it said the Supreme Court of the State of Washington has advised the Superior Court to "clear the crowded calendars with summary judgment."

PUBLIC INTEREST
PUBLIC PROTECTION
PUBLIC POLICY

"The public class of litigants is adversely affected by the case at

bar if a citizen cannot rely upon attorneys for their protection in legal matters."

"The summary judgment procedure is never to be used to relieve a crowded court calendar. CR 56."

Page 17:

"My respect for the courts never waivers. My respect for the Judges is consistent. My respect for the legal profession remains firm. This all amounts to a dependence upon the "system" to do what is right and just."

"Being a cripple has demoted self-esteem for over 11 years but the Constitution of the United States considers every citizen important."

To Correct To Pre-Mandate

APPENDIX E-6

939 North 105th Street
Seattle, Washington
98133

June 28, 1983

Honorable Reginald Shriver
Clerk, Supreme Court
State of Washington
Olympia, Washington

Dear Sir:

SETTLEMENT CONFERENCE

The brochure this appellant prepared for that occasion is not on the appellate court docket sheet, and I cannot find it in either Appeal #9346-1-I nor #8935-8-I when last in your court preparing my record for the United States Supreme Court Appeal.

This is an important document showing my effort to settle this case. It is a 8½ x 14 with tabs down the right side for the convenience of court and counsel, and myself.

The document is missing from the file.
It may have been mislaid or misfiled. I have

APPENDIX R-1

my copy with the stamp of service of the Court of Appeals and two adversary parties et ux, et al.

HAVE THE TAPES
BEEN FOUND AS YET?

TAPES OF ORAL ARGUMENT
COURT OF APPEALS DIV I
MARCH 24, 1982

Beatrice Koker, Appellant in the Court of Appeals Division I has asked that court for copies of the consolidated oral argument held March 24, 1982. The Court of Appeals answered they could not make me copies. I asked the day or oral argument, and in July when the opinion came down and again in November 1982.

In December while in Olympia, I asked the State Supreme Court verbally for copies of the oral argument, and they agreed, but they had to get the tapes. I re-asked in about February and then April and in June. This oral argument is not important and needed in preparation of the pending appeal in the United States Supreme Court.

THE FILE DOCUMENTS OUT OF ORDER

The files of 9346-1-I and 8935-8-I are out of order and I did not correct this as it is my duty to look at the files as they are, so I would check each document with the docket and this meant going back and forth as the years changed in the filing system. But this should be corrected before the files go into another court. I have and will and do appreciate all your help.

Respectfully,

/s/

Beatrice E. Koker, Pro Se

The Supreme Court
State of Washington

Olympia

98504

July 14, 1983

Ms. Beatrice E. Koker
939 North 105th Street
Seattle, Washington 98133

Re: Court of Appeals No. 8935-8-I
9346-1-I Koker v Betts

Dear Ms. Koker:

I am in receipt of your letter of June 28, 1983, regarding the record in the referenced cases. As early as I can determine, we have the entire record forwarded from the Court of Appeals. Neither the Pre-Settlement Conference Brochure nor the tapes of the March 24, 1982, oral argument appear in that record. I am informed by Mr. Taylor that the tapes of oral argument in the Court of Appeals are, as a matter of course, removed from the files at the time the mandate issues from that court, and are re-used. Presumably, this procedure was followed in your case.

Very truly yours,

/s/

Reginald N. Shriver

Clerk

APPENDIX G-1

Excerpts From Disclosure Motion: Page 6:

"As soon as the shocking words in opinion came through July 6, 1982, I read them without the slightest recognition of the case at bar with jury issues, questions of credibility, the CR 56 Rules. Nothing."

"The oral argument questions for the jury raised from the bench, disappeared - - the oral argument questions from the bench as to motive being an issue for the jury disappeared. The aura of oral argument March 24, 1983 is a vital influence to recognition of the discrepancy between the dignity of the courtroom and the shambles of somebody's authorship leaving out one complete cause of action, and even to the extent of relating my husband is deceased when he is not."

"THEN WHY A PER CURIAM RULING OUT OF CONTEXT WITH ORAL ARGUMENT RECEPTION?

"WHY IS PUBLIC DISCLOSURE BEING WITHHELD FOR A SIMPLE REQUEST OF A COPY OF THE ORDERS FOR THOSE OPINIONS?

Excerpts From Disclosure Motion: Page 7:

"The State Disclosure Act RCW 42.17.340 has costs recoverable up to \$25. per day for which the documents are wrongfully withheld. Beatrice Koker must state emphatically that at no time have I ever made a mercenary motion to ask for sanctions or costs-funds for myself in the most degrading prejudicial treatment. I would not claim this penalty."

Excerpts Page 10: CONCLUSION

"Public Disclosure in the right to information. Why would a court want to withhold the information I request, am willing to pay for, and is my right to have? There is no prejudice to anyone. Thousands of other opinions have this information right upon them. The information is missing from a per curiam ruling, I am seeking it another way and that way is blocked. To withhold from me, what others automatically

have, is not equal protection under the law."

Excerpts Page 4:

"There are pro se facts which may enter into this." "An overheard remark in essence: "Two more pro se cases came in here today. How am I going to break that to the Judge?"

Excerpts Page 6:

"Coping with hoping is believing there is justice. There is a consensus that predicts a pro se will fail in lower court, fail in appellate court, fail in the state Supreme Court and "That will be the end of it." Encounters with this concept of abject hopelessness, inspired me to remind that there is a United States Supreme Court. The reply specifically states in essence, "Oh well, they do not care what we do down here."

(ATTORNEYS MADE ME BECOME A PRO SE)

82 - 1947

NO. _____

Office - Supreme Court, U.S.

FILED

MAY 3 1983

ALEXANDER L. STEVENS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

ERICH KOKER and BEATRICE E. KOKER,

APPELLANTS

VS

FREDERICK V. BETTS and JANE DOE BETTS,
his wife, and their marital community,
and SKEEL, McKELVY, HENKE, EVANSON &
BETTS, Law Firm Of Frederick V. Betts,

APPELLEES

AND

KENNETH L. LeMASTER and JANE DOE
LeMASTER, his wife, and their marital
community, and SAFECO INSURANCE COMPANY
OF AMERICA, and GENERAL INSURANCE COMPANY
OF AMERICA, and FIRST NATIONAL INSURANCE
COMPANY OF AMERICA.

APPELLEES

A-P-P-E-N-D-I-X

JURISDICTIONAL STATEMENT

ON APPEAL FROM THE COURT OF APPEALS
DIVISION I AND THE SUPREME COURT OF
THE STATE OF WASHINGTON

Beatrice E. Koker
Erich Koker
Pro Se

939 N. 105th St.
Seattle, WN 98133
(206) 783-6998

APPENDIX "A"

DEF/RESPONDENT #1 ONLY
Appeal - - - - #9346-1-I
Supreme - - - 49006-6
Court

*I do certify
all xeroxing
to be true
Copies.
Beatrice Koker*

Copy Of United States - - - - - A
Court Appeal

SUPERIOR COURT
KING COUNTY WASHINGTON

Order - Denying Def #1 - - - - - A-1:
Summary Judgment Cause I
Legal Malpractice

Granting Def #1 A-1 thru A-4:
Summary Judgment II III IV

Letter Of Recusal From A-5 and A-6:
Honorable Judge Goodloe

COURT OF APPEALS
DIVISION I

Notice Court Of Appeals A-7:
Decision

Opinion - Affirming Granting
Summary Judgment II III IV A-8 Thru A-14:
Reversing Denied Summary
Judgment Cross-Appeal

(Appendix C-32 Thru C-42
Petitioner's Report On
The Opinion For Both
Def #1 and Def #2:)

Order - Denying Motion A-15:
For Reconsideration

INDEX "A"
APPENDIX

SUPREME COURT
STATE OF WASHINGTON

Denial Petition - - - - - A-16:
For Review

Hearing Set For Ruling A-17:
Pending Motions Same As
For Def #2
January 7, 1983:

Motion Denied * - - - - - A-18:
January 7, 1983:
Exhaustion Of Remedies
In Washington State
End Of State Action

Affidavit Of "Lack Of A-19--A-34:
Standard Of Care"

A-35 and A-36:

Affidavit - Lay Witness A-35 And A-36:
Proving Def #1 Untruthful
To Judge

Statistical Record - CP A-37 Thru A-40:
Superior Court Summary
Judgment Proceedings -
On Appeal

Statement Of Case - Record--A-41 Thru A-58:
Trial Court Proceedings And
CP AND RP References

Assignment Of Errors On A-59 And A-60:
Appeal - Evaded and Avoided
In Opinion Court Of Appeals
Federal Question In All Errors

Where And How Federal Question
Raised - Set Forth A-61 Thru A-72:

Class - References A-73 Thru A-78:

INDEX "A" APPENDIX

APPENDIX

CONSOLIDATED BY RULE 19.4 Or Rule 10.6:

Voluminous material may be set forth separately as per Rule 15. There is appeal for jurisdiction, probable jurisdiction, and/or postponement of jurisdiction, and the appendix as submitted is a necessity:

APPENDIX A is for F. V. Betts with his orders retyped, excerpts from standard of care affidavit, excerpts statement of case on record, numerical list of CP, where and how Federal question raised et al. Voluminous material may be set forth separately in Appendix as per rule 15. APPEAL #9346-1-I: (See Index)

APPENDIX B is for Kenneth L. LeMaster with likewise information for his case. One complaint for all defendants and two proceedings in state courts with closely related and identical issues. #8935-8-I:

APPENDIX C consolidated for both Betts and LeMaster with manifest errors, law provisions jurisdiction authorities et al. (See Index)

APPENDIX INFORMATION

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

ERICH KOKER and BEATRICE
E. Koker, husband and wife,

Plaintiffs, Appellants,
Petitioners,

V

FREDERICK V. BETTS and JANE
DOE BETTS, his wife, and their
marital community, and SKEEL,
McKELVY, HENKE, EVANSON & BETTS,
Law Firm Of Frederick V. Betts,

Defendants #1

RESPONDENTS #1

KENNETH L. LeMASTER and JANE DOE
LeMASTER, his wife, and their
marital community, and SAFECO
INSURANCE COMPANY OF AMERICA,
and GENERAL INSURANCE COMPANY
OF AMERICA, and FIRST NATIONAL
INSURANCE COMPANY OF AMERICA.

Defendants #2

RESPONDENTS #2

) NOTICE OF
) APPEAL FROM
) STATE COURT,
) CIVIL CASE

) FROM

) COURT OF
) APPEALS-STATE
) OF WASHINGTON
) #9346-1-I
) DIVISION I
) DEF. RESPOND-
) ENTS #1

) AND

) STATE SUPREME
) COURT OF THE
) STATE OF
) WASHINGTON
) #49006-6
) DEF/RESPOND-
) ENTS #1

) FROM:
) SUMMARY JUDG-
) MENT PROCEED-
) ING

) DATED:
) Jan 27, 1983

NOTICE OF APPEAL TO THE SUPREME
COURT OF THE UNITED STATES

Notice is hereby given that Beatrice E. Koker
and Erich Koker, the above named plaintiffs/
Appellants/Petitioners hereby appeal to the
Supreme Court of the United States from the

NOTICE OF APPEAL
TO THE UNITED STATES
SUPREME COURT Def/Respondents #1

A

final judgments of the Court of Appeals Div I and the Supreme Court of the State of Washington.

"APPEALING FROM"

APPEALING FROM: The final judgment of a granted summary judgment affirmed in the Court of Appeals Division I State of Washington, Cause II III IV to Defendants/Respondents #1 - Frederick V, Betts et ux, et al. APPEAL 9346-1-I:

APPEALING FROM: The final judgment of REVERSING a denied summary judgment in the Court of Appeals Div I State of Washington, Cause I Legal Malpractice cross-appeal, Defendants/Respondents #1. Appeal 9346-1-I:

APPEALING FROM: Denial of motion for reconsideration Cause I II III IV by the Court of Appeals Div I, State of Washington. Appeal 9346-1-I:

APPEALING FROM: Denial of Petition for Review in the State of Washington Supreme Court, dis-

regarding and/or evading the fact four considerations to the court by rule were met by petitioner. Petition 49006-6:

APPEALING FROM: Constitutional denial for reconsideration-rehearing for denial of petition for review in two ways: (1) Unconstitutional to repeal rehearing statute RCW 2.04.160. (2) Disregarding, ignoring, evading discretionary ruling for rehearing, or RAP 1.2(a) for "justice." Clerk of the Supreme Court of the State of Washington "filing and no further action" on reconsideration-rehearing motion upheld by State Supreme Court. Under facts, a denial of constitutional right. And there are others. STATE CONSTITUTION ARTICLE 4, §1:
Petition 49006-6:

ATTACHED:
JUDGMENTS ENTERED: COURT OF APPEALS DIV I
AFFIRMING A GRANTED SUMMARY July 6, 1982:
JUDGMENT CAUSE II III IV:

REVERSING DENIED SUMMARY JUDGMENT July 6, 1982

RECONSIDERATION DENIED: Aug 5, 1982

NOTICE OF APPEAL
Def/Respondents #1

A

JUDGMENTS ENTERED:

STATE SUPREME COURT OF WASHINGTON

PETITION FOR REVIEW DENIED Nov 5, 1982
MOTION TO GRANT OR DENY Jan 7, 1983
REHEARING NOT RULED:
EVADING OPINION OF COURT Nov 5, 1982:
REFUSED IDENTITY DISCLOSURE

(See: Appendix A-7 and A-15-16-17-18)

- - This appeal is taken pursuant to 28 USC
§1257(3) and §1257(2) and USCA RULE 56 Summary
Judgment and equivalent Washington State Court
Rule CR 56 Summary Judgment.

- - This appeal is taken pursuant to the
Constitution of the United States Amendment 14.
and the entire Constitution as per circumstances
and facts and evidence applicable. Not limit-
ed to Title 8, Title 18, Title 28, Title 42,
ARTICLE III ET AL.

- - This appeal taken pursuant to Judiciary
Act of 1789 Section 25.

- - This appeal taken pursuant to existence
of evading Federal Questions by State Courts
who could not reach a determination without

NOTICE OF APPEAL
Def/Respondents #1

A

ruling on the Federal Question.

- - This appeal to the United States Supreme Court pursuant to denial of access to courts contrary to law. Denied a trial. State appeal did not correct.

"It is essential criterion of appellate jurisdiction that it revises and corrects proceeding in cause already instituted, and does not create that cause." 28 USCS §1257 Note 1:

- - This appeal pursuant to denial of access to courts via summary judgment contrary to law, affirmed on appeal, and reversal of denied summary judgment.

- - This appeal taken pursuant to Constitutional right to trial fully and fairly heard in a meaningful manner under the facts, rules, law, evidence and circumstances of the case at bar.

- - This appeal taken pursuant to determination of "STATE BAR ACT" and "STATE ACTION" and Attorneys "UNDER COLOR OF LAW." RCW 2.48

- - This appeal taken pursuant to seeking the supervision of the United States Supreme Court

NOTICE OF APPEAL
De/Respondents #1

A

invoking their jurisdiction in this appeal to Washington State Court of Appeals Division I and the Washington State Supreme Court in defense of Beatrice Koker's rights. The State Appellate Structure (Court of Appeals and Supreme Court) have so departed from the accepted and usual course of judicial proceedings and have sanctioned such a departure by a lower court as to call for an exercise of the supervision and justice from the highest court in the land. The Courts of the State of Washington have deprived me of rights and deprived me of redress and remedy to the damage of Beatrice Koker, citizen and person. The result has left me barren with no life, liberty, nor pursuit of happiness.

- - Below is a newspaper article from Seattle Post Intelligencer January 26, 1983, regarding the overcrowded courts. Appealing to the Supreme Court to determine "checks and balances" of State Courts subsidizing injustice, and deprivation of Constitutional rights and

avoiding, evading, escaping rulings and judgment. I ask investigation of this to determine if overcrowded court calendars and overworked judges effects judgment of the courts in "denials" or rights, and judgments contrary to law.

STATE COURTS
BEING FLOODED,
A JUSTICE SAYS
(Newspaper)

OLYMPIA (AP) --"Washington lawmakers have been warned that state courts are being strangled by paperwork and too many lawsuits and that quality of judges may be sliding because of poor pay.

"We're just inundated" state Supreme Court Justice Robert Brachtenbach told the Senate Judiciary Committee yesterday. "If the appeals courts of our state didn't take another case after tomorrow, it would take three years to catch up, even though productivity is up 40 percent."

At the superior court level, over 158,000 new suits were filed last year, and municipal, district and appeals courts also are jammed with cases, he said.

Two Years For Appeal

It can take two years to go through the appeals process, he said,

NOTICE OF APPEAL Def/Respondents #1

A

Adding, "That's an intolerable period of time."

A new study shows that landlord-tenant disputes and domestic squabbles, not damage suits, are taking the bulk of judges' time, Brachtenbach said.

"A true story: A judge told me he spent two hours hearing arguments on who would get custody of the dog (in a divorce case," he said.

Legislators may have to find non-court ways of settling time-consuming landlord-tenant disagreements and domestic cases, he said.

The courts already are diverting some cases to court commissioners, pre-settlement conferences and "everything we can think of" to ease the crunch, but lawmakers may want to order more arbitration or some other answer, he said.

"We need to stop this paperwork jungle," Brachtenbach said.

"Court case levels predicted for the year 2000 already have been passed, added Appeals Judge James Andersen.

Supreme Court Chief Justice William Williams argued for a fatter budget for his court, saying new law clerks and other personnel are needed to cope with the avalanche of complicated suits "such as WPPSS, asbestos cases and death penalty appeals."

The panel also heard a strong recommendation for jacking up judges' pay.

"Chairman Phil Talmadge, D-Seattle and others are pushing a bill to boost the pay for superior court judges from the current \$44,700 to \$60,000. Pay for an appeals judge would go from \$48,000 to \$63,000, and supreme court justices' pay would go from \$51,000 to \$66,000."

JURISDICTION: On appeal to the United States Supreme Court, petitioners Kokers ask that jurisdiction of this appeal is postponed until after review of the merits. The record speaks for jurisdiction.

This appeal is made in good faith by the petitioners Beatrice E. Koker and Erich Koker. This appeal is not made in anger nor animosity nor vindictiveness, nor maliciously. This appeal is made in grief.

Should the jurisdiction be granted, the petitioners ask the United States Supreme Court to reverse the entire case to trial by reversing the granted summary judgment affirmed on appeal in Cause II III IV to Defendants #1 We ask reversal of reversal of a denied

NOTICE OF APPEAL Def/Respondents #1

A

summary judgment in lower court, on Cause I
cross appeal of Def #1. In the alternative
to trial, settlement out of court or damages
awarded for injuries, deprivation, et al by
the United States Supreme Court. The con-
cealment theory upon which this case en-
compasses deceit and lying to judges and
jury, and involving misrepresentation and
suppression of material facts to injuries in
1976 trial for injuries, is by Washington
State Court order and appeal to be forever
buried. To bury this case is to invite
resurrection."

HAND DELIVERED
TO: (SERVICE)

Washington
State Supreme
Court

Court of Appeals
Division I

Respondents #1
Attorney Of Record
Mr. Michael Mines
(Now Changed To
Ingrid Hansen)

(Addresses On Filed Copy)

RESPECTFULLY SUBMITTED,

/s/
Beatrice E. Koker, Pro Se

/s/
Erich Koker

NOTICE OF APPEAL Def/Respondents #1

A

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

ERICH KOKER and BEATRICE	)	No. 864509
E. KOKER, husband and wife,)	
	)	ORDER:
Plaintiffs,	)	(1) DENYING
	)	DEFENDANTS #1
-vs-	)	MOTION FOR
	)	SUMMARY JUDGMENT
FREDERICK V. BETTS, et ux,	)	ON CAUSE OF
et al,	)	ACTION I
Defendants #1)	
	)	(2) GRANTING
KENNETH L. LeMASTER, et ux,	)	DEFENDANTS #1
et al,	)	MOTION FOR
Defendants #2.	)	SUMMARY JUDGMENT
<hr/>		ON CAUSES OF
		ACTION II, III,
		IV AND DECLARING
		NO JUST REASON
		FOR DELAY

THIS MATTER having come on for hearing
before the undersigned judge of the above
entitled court, upon the motion of defend-
ants #1, impleaded herein as "Frederick V.
Betts and Jane Doe Betts, his wife, and their
marital community and Skeel, McKelvy, Henke,
Evanson (sic) and Betts, Law Firm of Frederick
V. Betts" and the court having considered the
following documents:

1. Plaintiffs' Complaint #864509;

SUPERIOR COURT ORDER (1) (2)

SEE: RP "SUMMARY JUDGMENT"
MAIL 6, 1980 - p 59-60 lines 3-14

A-1

2. Defendants #1 Motion for Summary Judgment of Dismissal Pursuant to CR 56 and accompanying Affidavit of Frederick V. Betts, dated December 6, 1979, one page;
3. Affidavit of Frederick V. Betts in Support of Motion for Judgment Dividing Defendants #1, dated February, 1980, eight pages;
4. Plaintiffs' Motion to strike Summary Judgment Motion of Defendants #1 on Grounds of Error in the Affidavit of Frederick V. Betts, page 2, lines 9-15, filed March 10, 1980, hearing March 18, 1980;
5. Plaintiffs' Affidavit Form Memorandum in Opposition to Defendants #1 Motion for Summary Judgment, including plaintiffs' separate index for the Memorandum and Exhibits 1,2,3,4,5,6,7, 8A, 8B, 8C, 8D, 9, 10, 11 and 12, included in plaintiffs' Memorandum;
6. Plaintiffs' Motion for Continuance in the Event of "conspiracy of silence" in

Obtaining the "Lack of Standard of Care,
Affidavit, filed April 14, 1980;

7. Motion by Plaintiffs for Continuance Due
to "Conspiracy of Silence" to be Heard before
Summary Judgment Hearing April 21, 1980;

8. Three-line Affidavit of F. V. Betts,
Defendant #1 dated April 21, 1980, attaching
court's instructions to jury from Superior
Court of the State of Washington for King
County, Cause No. 773 620;

9. Two-line Affidavit of F. V. Betts, Defend-
ant #1, dated April 21, 1980. attaching
letters sent to plaintiffs, dated February 3,
August 18 and August 21, 1975;

10. Plaintiffs' Cross References by Subject:
"Complaint" "Affidavit of Frederick V. Betts"
"Memorandum in Opposition" Plaintiff;

11. Plaintiffs' Memorandum in Opposition to
F. V. Betts, Defendants #1 Affidavit, dated
April 21, 1980, filed April 28, 1980. Subject:
Untruth #4 - Conspiracy Re: May 7, 1974

Letter Written by Defendant #1 Regarding
Continuance of Trial Date;

12. Plaintiffs' Affidavit form Memorandum in
opposition to F. V. Betts, Defendant #1 Three-
Line affidavit, dated April 21, 1980, Memorandum
filed April 28, 1980. Subject: Court's
Instructions;

13. Plaintiffs' Affidavit Form Memorandum in
opposition to F. V. Betts, Defendants #1 Two-line
Affidavit, dated April 21, 1980. Subject:
1975 Letters regarding Settlement Before
Proof of Permanent Injuries;

14. Plaintiffs' Affidavit in Re: Proof of
Informing Frederick V. Betts, Defendants #1
of Testimony of Third Lay Witness, filed May
7, 1980;

15. Affidavit of Chas H. W. Talbot, dated
May 7, 1980, Re: "Standard of Care" affi-
davit Required by CR 56 in Opposition to
Summary judgment Motion. Affidavit 16 pages
long;

16. Plaintiffs' Affidavit Re: Lack of

Standard of Care - Dr. Einar Henriksen Medical Report-Deposition. No Medical Report Ever Asked of Dr. Henriksen. No Deposition Planned Until Trial Time June 1976;

17. Plaintiffs' Affidavit Controverting, Refuting, Denying Frederick V. Betts, et ux, et al, Motion for Summary Judgment;

18. Plaintiffs' Affidavit in Opposition to Defendants #1, et ux, et al Motion for Summary Judgment "Standard of Care" - Laymen, dated May 8 1980.

19. Plaintiffs' Apology to the Court, dated May 13, 1980;

20. Affidavit of Michael Mines, dated May 7, 1980, attaching portions of Dr. Sata's deposition from King County Cause No. 773 620.

21. Memorandum of Defendants Betts and Skeel, McKelvy, Henke, Evenson & Betts, in opposition to Plaintiffs' Memoranda regarding Defendants #1 Motion for Summary Judgment. Written by Michael Mines; not in affidavit form;

22. Plaintiffs' Affidavit and Memorandum in Answer Controverting Attorney Michael Mines Memorandum Re: Defendants #1 Motion for Summary Judgment. In Opposition. Dated: May 12, 1980;

23. Plaintiffs' Document Dated May 14, 1980 Re: Medical Deposition (of Dr. William K. Sata) Not Accurately Reported of Missing Pages by Defendant #1; Re: Additional Medical Depositions: Depositions of Plaintiffs' Medical Witnesses Submitted to the Court:

Dr. William K. Sata 1976 Trial 773620

Dr. Anders E. Sola 1976 Trial 773620

Dr. Einar Henriksen 1976 Trial 773620

Dr. Thomas Smersh 1976 Trial 773620

Dr. Freidinger 1976 Trial 773620

24. Plaintiffs' Document Filed May 15, 1980 Re: Clarification Mr. Frederick V. Betts eight page Affidavit Re: \$2,839.00 Dr. Sola's Medical Bill and Re: Copy of Dr. Freidinger's Deposition Presented to Court as Last Medical Witness. Dr. Arthur Freidinger Deposition

SUPERIOR COURT ORDER SJ (1)(2)

A-3(a)

Submitted to the Court;

25. Dr. Freidinger Progress Record for Plaintiff Beatrice Koker for 1976 Trial;
26. Affidavit of Dr. Einar Henriksen regarding Plaintiff Beatrice Koker's Injuries, dated June 23, 1978, File for Cause 864509 May 15, 1980;
27. Plaintiffs' Notice of Intent to Ask Reconsideration of Three Points Only of Cause II, III, IV Dated: May 19, 1980;
28. Plaintiffs' Motion of Reconsideration - filed May 21, 1980; Motion for Hearing June 6, 1980 - 9:30 a.m.;
29. Plaintiffs' Motion for Reconsideration - Additional filed May 29, 1980, to be heard scheduled motion hearing June 6, 1980.

And the court having heard additional oral argument on plaintiffs' motion for reconsideration on June 6, 1980 and having reconsidered his oral opinion in light of the material submitted by the plaintiff in support her motion for reconsideration and being fully

advised in the premises, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. The motion of defendants #1 for summary judgment with respect to Cause of Action I - Malpractice is denied, it appearing that there are genuine issues of material fact with respect to that cause of action;

2. It appearing that there is no genuine issue of material fact with respect to Causes of Action II, III and IV, defendants' motion for summary judgment with respect to Causes of Action II, III and IV is granted and said causes of action are dismissed;

IT IS FURTHER ORDERED with respect to Causes of Action II, III and IV, and the summary judgment granted thereon, that there is no just reason for delay of the entry of final judgment with respect to the dismissal of those actions.

DONE IN OPEN COURT this 3 day of
Sept
June, 1980.

/s/

Judge William C. Goodloe

SUPERIOR COURT ORDER SJ (1)(2)
CP FILE #177 P 1:

A-4(a)

William C. Goodloe
Judge of the Superior Court
Seattle, 98104

June 3, 1980

Certified Mail

Mrs. Beatrice E. Koker
939 North 105th
Seattle, WA 98133

Mr. Michael Mines
Attorney At Law
40th Floor - Bank of
California Building
Seattle, WA 98165

Re: Koker vs. Fred V. Betts
King County Cause #864 509

Dear Mrs. Koker and Mr. Mines:

I have been working with the above entitled case on a preassigned basis for many months now and from the beginning I had a very uneasy feeling concerning my personal friendship with Fred Betts. I have been associated with Fred Betts on the practice of the law for many years. Because of this, I revisited the Code of Judicial Conduct over the last weekend. I cite to you Canon III of the Code of Judicial Conduct, Sub-paragraph C.

LETTER OF RECUSAL CP FILE # 151 P59:

HONORABLE JUDGE WILLIAM C. GOODLOE

A-5

"Disqualification

1. A judge should disqualify himself in a proceeding in which his partiality might reasonably be questioned, including but not limited to instances where:

a) he has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding"

I believe that my personal knowledge of Mr. Betts over the years might cause a reasonable question to arise concerning a bias or prejudice in his favor.

I have discussed this matter with the Presiding Judge and he has agreed to assign a Spokane judge to come to Seattle for the purposes of the trial. If each of you can agree upon the trial date, the Presiding Judge will assign a trial date upon informing him.

Having checked the record, I believe the case is ready for trial at this time. I will deliver the materials that I have acquired to the new judge when his identification is known.

Yours truly,

/s/

William C. Goodloe

LETTER OF RECUSAL HONORABLE JUDGE GOODLOE

A-6

THE COURT OF APPEALS
OF THE
STATE OF WASHINGTON
Seattle

July 6, 1982

Beatrice Koker
939 North 105th St
Seattle, WA 98133

Betts, Patterson and Mines
Mr. Michael Mines
900 4th Ave Suite 4000
Seattle, WA 98165

Counsel:

Re: No. 9346-1-I, Koker v Betts and LeMaster
King County No. 864509

The opinion filed by this court in the above
referenced case today states in part as
follows:

"Affirmed in part. Reversed in part."

In accordance with RAP 14.4(a), claim for
costs by the prevailing party must be support-
ed by a cost bill filed and served within ten
days after the filing of this opinion, or claim
for costs will be deemed to have been waived.

In the event counsel desires to file a motion
for reconsideration, your attention is direct-
ed to RAP 12.4(b), which states that the
motion for reconsideration must be filed with-
in 20 days after the decision is filed.

Very truly yours,

/S/

Richard D. Taylor, Clerk

IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON

ERICK KOKER and BEATRICE)	
E. KOKER, husband and wife,)	
Appellants,)	
	)	No. 9346-1-I
v.)	
)	
FREDERICK V. BETTS and JANE)	
DOE BETTS, his wife, and)	
their marital community, and	)	DIVISION ONE
SKEEL, McKELVY, HENKE, EVAN-)	
SON & BETTS, Law Firm of)	
FREDERICK V. BETTS,)	
Respondents,)	
)	
and)	
)	
KENNETH L. LeMASTER and JANE)	
DOE LeMASTER, his wife, and)	
their marital community, and)	
SAFECO INSURANCE COMPANY OF)	
AMERICA, and GENERAL INSUR-)	
ANCE COMPANY OF AMERICA, and)	
FIRST NATIONAL INSURANCE	)	FILED
COMPANY OF AMERICA,	)	JUL 6 1982
)	
Defendants.)	

PER CURIAM.--Plaintiff Beatrice E.
Koker appeals from a summary judgment
dismissing her complaint for 1) conspiracy,
2) misrepresentation, fraud, deceit, and 3)
outrage. Defendant, Frederick V. Betts,

OPINION COURT OF APPEALS FOR DEF #1

A-8

cross-appeals from a denial of his motion for summary judgment on the claim of legal malpractice.

FACTS

Beatrice Koker and her husband, now deceased, brought a personal injury action in 1976, Koker v. Sage, King County Cause No. 77360, seeking damages for injuries she sustained in a 1971 automobile accident. Liability was admitted and the jury returned a verdict of \$4,600 in favor of Koker. She was represented at trial by Betts.

Koker, acting pro se, appealed the judgment, which was subsequently affirmed by this court in an unpublished opinion. Koker v. Sage, Court of Appeals, Division I, No. 4916-I, petition for review denied 91 Wn.2d 1014 (1979).

Koker commenced this action against Betts alleging 1) legal malpractice, 2) conspiracy, 3) misrepresentation,

OPINION COURT OF APPEALS FOR DEF #1

A-8(a)

Allard v. Board of Regents, 25 Wn. App. 243, 247, 606 P.2d 280 (1980). The evidence is sufficient only if the facts and circumstances relied upon to establish the conspiracy are inconsistent with a lawful or honest purpose and reasonably consistent only with the existence of the conspiracy. Baun v. Lumber & Sawmill Workers Local 2740, 46 Wn.2d 645, 656, 284 P.2d 275 (1955); O'Brien v. Larson, 11 Wn. App. 52, 56, 521 P.2d 228 (1974). This evidence must be clear, cogent, and convincing. Corbit v. J.I. Case Co., supra at 529; O'Brien v. Larson, supra at 55.

A motion for summary judgment will be granted only if, after viewing all the pleadings, affidavits, depositions, admissions and all reasonable inferences therefrom in favor of the nonmoving party, it can be said (1) that there is no genuine issue of material fact, (2) that reasonable

OPINION COURT OF APPEALS FOR DEF #1

A-9

persons could reach only one conclusion, and (3) that the moving party is entitled to judgment as a matter of law. Peterick v. State, 22 Wn. App. 163, 180-81, 589 P.2d 250 (1977). To avoid summary judgment, the nonmoving party may not rely solely on speculation and argumentative assertions. Upon the submission by the moving party of adequate affidavits, the nonmoving party must set forth specific facts to rebut the moving party's contentions and show a genuine issue of material fact. Allard v. Board of Regents, supra at 247; Peterick v. State, supra at 181.

Koker alleges that various actions and statements by the two attorneys during and after trial constituted a conspiracy to deprive her of a fair trial.

From an examination of the record, it appears that all of these statements and events are consistent with a lawful purpose and not reasonably consistent with the

OPINION COURT OF APPEALS FOR DEF #1

A-9(a)

existence of a conspiracy. There is no evidence of an "agreement." There are no written communications or contracts, or conversations which would create even a suspicion of a conspiracy. Further, it appears that Betts had a contingent fee arrangement with Koker which is inconsistent with the existence of a conspiracy. Since there is no evidence of an agreement, a conspiracy cannot be established as a matter of law. Corbit v. J. I. Case Co., supra. The trial court did not err in granting summary judgment as a matter of law on this issue.

MISREPRESENTATION, FRAUD & DECEIT

Next, Koker alleges that Betts committed misrepresentation, fraud and deceit by failing to disclose to the trial court that various statements made by LeMaster were untrue.

OPINION COURT OF APPEALS FOR DEF #1

A-10

In Washington in order to recover in a cause of action for fraud the following elements must be established:

(1) A representation of an existing fact; (2) its materiality; (3) its falsity; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) his intent that it should be acted on by the person to whom it is made; (6) ignorance of its falsity on the part of the person to whom it is made; (7) the latter's reliance on the truth of the representation; (8) his right to rely upon it; (9) his consequent damage.

Sigman v. Steven-Norton, Inc., 70 Wn.2d 915, 920, 425 P.2d 891 (1967); Martin v. Miller, 24 Wn. App. 306, 308, 600 P.2d 698 (1979). Because they are so easy to assert, fraud and deceit must be established by clear, cogent and convincing evidence. House v. Thornton, 76 Wn.2d 428, 433, 457 P.2d 199 (1969).

Whether a misrepresentation was made with intent to deceive is a question of fact. Wilburn v. Pioneer Mutual Life Insur. Co., 8 Wn. App. 616, 620, 508 P.2d

OPINION COURT OF APPEALS FOR DEF #1

A-10 (a)

632 (1973). However, if all the facts and circumstances are consistent with an honest intent, fraud is not proved. Marrazzo v. Orino, 194 Wash. 364, 377, 78 P.2d 181 (1938).

From an examination of the record, Koker has not presented any evidence of LeMaster's intent to misrepresent, deceive or commit a fraud on either Koker or her counsel.

OUTRAGE

Next, Koker argues that the trial court erred when it held as a matter of law that Bett's conduct was not so extreme and outrageous as to permit recovery under the tort of outrage.

In order to recover under this theory the following elements must be established; (1) emotional distress must have been inflicted intentionally or recklessly (mere negligence is not enough); (2) the conduct of the defendant must have been outrageous

OPINION COURT OF APPEALS FOR DEF #1

A-11

and extreme; (3) the conduct must have caused severe emotional distress to the plaintiff. Grimsby v. Samson, 85 Wn.2d 52, 59, 530 P.2d 291 (1975).

Recovery for outrage can only be had if the conduct has been "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Grimsby v. Samson, surpa at 59; Restatement (Second) of Torts § 46, comment d (1965).

Whether conduct was extreme and outrageous is for the court to determine; if reasonable people might differ, then the question is for the jury. Bowe v. Eaton, 17 Wn. App. 840, 845, 565 P.2d 826 (1977); Restatement (Second) of Torts § 46, comment h (1965).

In the instant case there is no evidence of any intentional or reckless

OPINION COURT OF APPEALS FOR DEF #1

A-11(a)

acts. In fact Koker stated at the hearing before the trial court, "I don't see that these people want to go about doing harm deliberately." Such statements are inconsistent with a claim for outrage. Grimsby v. Samson, supra. Even though the extreme and outrageous character of the conduct may arise from the actor's superior position, no liability results from "mere insults, indignities, or annoyances." Contreras v. Crown Zellerbach Corp., (Stafford, J., concurring), 88 Wn.2d 735, 744, 565 P.2d 1173 (1977); Restatement (Second) of torts § 46 comment e. The trial court properly dismissed this cause of action as a matter of law. Bowe v. Eaton, supra.

LEGAL MALPRACTICE

Betts argues in his cross-appeal that summary judgment should have been granted on the issue of legal malpractice because the affidavit of Koker's expert is insufficient to create an issue of fact.

A-12

A plaintiff in a medical malpractice case must establish a standard of care, and violation of that standard, through expert testimony, unless laymen would have no difficulty recognizing the claimed negligence as a departure from prevailing standards. Walker v. Bangs, 92 Wn.2d 854, 858, 601 P.2d 1279 (1979); Swanson v. Brigham, 18 Wn. App. 647, 651, 571 P.2d 217 (1977).

In support of her claim Koker filed the affidavit of Chas. Talbot, an attorney, which states:

I am unable to form an opinion as to whether Mr. Betts' handling of the case met the applicable professional standards. The record shows numerous instances of highly questionable acts and omissions by Mr. Betts, which suggest, but do not conclusively establish, significant deviations from acceptable practice.

(Italics ours.) When an expert cannot state an opinion, his testimony is inadmissible. O'Donoghue v. Riggs, 73 Wn.2d 814, 822, 440 P.2d 823 (1968). Affidavits
OPINION COURT OF APPEALS FOR DEF #1

A-13

opposing a motion for summary judgment "shall set forth such facts as would be admissible in evidence." CR 56(e). Since Talbot's affidavit did not state an opinion no material issue of fact is raised. In addition, there is no other evidence which creates a material issue of fact. The trial court erred in not granting summary judgment.

Affirmed in part. Reversed in part.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040. IT IS SO ORDERED.

/s/ _____
CHIEF JUDGE

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON

ERICK KOKER and BEATRICE
E. KOKER, husband and wife,
Appellants,

v.

FREDERICK V. BETTS and JANE
DOE BETTS, his wife, and their
marital community, and SKEEL,
McKELVY, HENKE, EVANSON &
BETTS, Law Firm Of Frederick
V. Betts,
Respondents,

and

KENNETH L. LeMASTER and JANE
DOE LeMASTER, his wife, and
their marital community, and
SAFECO INSURANCE COMPANY OF
AMERICA, and GENERAL INSURANCE
COMPANY OF AMERICA, and FIRST
NATIONAL INSURANCE COMPANY OF
AMERICA. Defendants.

No. 9346-1-I

ORDER
DENYING
MOTION FOR
RECONSIDER-
ATION

THE appellants, Erich Koker and Beatrice
E. Koker, having filed their motion for re-
consideration herein and a majority of the
court having determined that it should be
denied; Now, therefore, it is hereby

ORDERED that the motion for reconsider-
ation be, and the same hereby is, denied.

Dated this 5th day of August, 1982.

/s/

Frank D James, Acting Chief Judge

A-15

THE SUPREME COURT
State of Washington
Olympia, WA
98504

Ms. Beatrice Koker
939 North 105th Street
Seattle, Washington 98133

Mr. Michael Mines
Attorney at Law
40th Fl Bank of
California Center
Seattle, WA 98164

Helsell, Fetter-
man, Martin, Todd
& Hokanson

Mr. William
Helsell
P. O. Box 21846
Seattle, WA 98111

Counsel:

Re: Supreme Court No. 49006-6- Beatrice
Koker, et ux v Frederick Betts, et ux Court
of Appeals No. 9346-1-I

The above entitled Petition for Review
was considered by the Court on its November
5, 1982, Petition for Review Calendar.

The Petition was denied by order number
107/126 filed on November 8, 1982.

Very truly yours,

/s/

Reginald N. Shriver
Acting Clerk

A-16

THE SUPREME COURT
State of Washington
Olympia
98504

December 6, 1982

Ms. Beatrice Koker
939 North 105th Street
Seattle, WA 98133

Betts, Patterson & Mines
Mr. Michael Mines
40th Fl., Bank of Calif
Seattle, Washington 98164

Mr. William A.
Hellsell
Attorney at Law
P. O. Box 21846
Seattle, WA 98111

Re: Supreme Court No. 48900-9 Koker, et ux
V. Betts, et al. Supreme Court No. 49006-6-
Koker, et ux, v Betts, et al.

Counsel;

Petitioner's "motion to Rule on Pending
Motions" dated November 30, 1982, will be
considered a motion to modify the clerk's
determination communicated by letter dated
November 23, 1982, filing various post mandate
motions without further action.

The motion will be set for consideration
before a department of the Court on its Jan 7,
1982 motion calendar.

Very truly yours,

/s/
REGINALD N. SHRIVER
Acting Clerk

(Note: Please See A-17-(a)

A-17

Regarding Appendix A-17 calling the motions before the State Supreme Court as post mandate, when in fact my motions were filed pre mandate. I submitted a document filed in the Supreme Court of State of Washington December 20, 1982. Quoting from therein:

PRE-MANDATE

Page 1/23-27: 2/1-5: 2/24-28:

"The letter states petitioner Beatrice Koker's motions were "POST-mandate" This is error and must be corrected to read as "PRE-Mandate", as the mandate was issued AFTER the motion for Reconsideration. The Supreme Court grants as discretionary and not as a matter of right. CONSTITUTION OF STATE ART. 4, §2. RAP 1.2 (a)(c):

"Art 4, §2, states the decision of Supreme Court of the state becomes final unless within specified time, petition for hearing has been filed or rehearing has been ordered on court's own motion. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS V LUCAS FLOUR CO. (1962) 369 US 95, 7 L Ed 2d 593, 82 S Ct 571:

"AMENDMENT 14 OF THE UNITED STATES CONSTITUTION GOVERNS ANY ACTION OF STATE WHETHER THROUGH ITS COURTS, OR THROUGH EXECUTIVE OR ADMINISTRATIVE OFFICERS Constitution Amendment 14 Note 11 p 55:"

(Note: A-18: The Supreme Court denial)

A-17(a)

THE SUPREME COURT
State Of Washington
Olympia
98504

January 7, 1983

Mr. Erich Koker and Mrs. Beatrice E. Koker
939 North 105th Street
Seattle, WA 98133

Betts, Patterson & Mines
Mr. Frederick Betts
40th Floor, Bank of California
Seattle, WA 98164

Helsell, Fetterman, Martin, Todd & Hokanson
Mr. William A. Helsell
PO Box 21846
Seattle, WA 98111

RE: No. 48900-9 - KOKER V BETTS, ET AL
No. 49006-6 - KOKER V BETTS, ET AL

Counsel:

After a hearing this day, the following
Notation Order was entered in the above en-
titled action in Volume 14, at page 677, of
the Motion Docket.

MOTION TO MODIFY CLERK'S LETTER
OF DETERMINATION:

"DENIED."

/s/
William H. Williams
Acting Chief Justice
Very truly yours,

/s/
REGINALD N. SHRIVER
Acting Clerk

A-18

CP FILE #123 p 244: This is an affidavit by an attorney regarding the "LACK OF STANDARD OF CARE" of F. V. Betts, Def #1. The purpose of the affidavit to meet the CR 56 and Rule 56 demand for the affidavit to raise the issue for the jury.

There is a "conspiracy of silence" among attorneys, from my own knowledge and experience, to not submit the affidavit even though in complete agreement the standard of care is not met. The Lawyer Referral also had the same difficulty, and advised me to go out of the city to obtain the attorney affidavit.

I went to Spokane, Bellingham, Mount Vernon, and called long distance to many other cities, without result. The gentleman who wrote the affidavit of lack of standard of care, is from Seattle, and told him my predicament trying to keep a mandatory court rule, and he consented to examine my records and if he found them to warrant lack of standard of care he would provide the affidavit.
(QUOTING BEGINNING A-20) *Appeal 9346-I-F*

A-19

TYPE-COPIED FROM CP FILE #123 p 244: PARTIAL.

p 3/21-23:

B. ADHERENCE TO APPLICABLE PROFESSIONAL
STANDARDS NOT DEMONSTRABLE FROM RECORD

4. No adequate showing that standards
were met.

p 3/29-30: p 4/1-10:

5. Case presented in confusing way. A reading of the trial transcript conveys a distinct impression that the plaintiffs' case was presented to the jury in a confused and confusing way. The order in which the proof was presented makes no apparent sense. Mr. Betts seems not to have known what the proof would be in several important instances. The trial judge found it appropriate to intervene in the presence of the jury on more than one occasion to attempt to clear up the seemingly unnecessary confusion--a disturbing state of affairs. It seems clear that this state of things resulted from poor preparation by plaintiffs' counsel.

CP FILE #123 p 244 EXCERPTS *appeal 9346-1-I*
"Lack Of Standard Of Care"

A-20

p 4/11-15; and 21-30; P 5/1-4: "6. Failure
to call important medical witnesses. The
failure to call certain witnesses raises ques-
tions in my mind, and opposing counsel in
closing argument noted the absence of those
witnesses to the jury, in what must have been
an effective way." "The presentation of the
medical testimony with respect to Drs Sata
and Smersh, based on reports, and reports of
reports, is particularly confusing in the
trial Record of Proceedings. How the jury
made sense of that presentation is a mystery.
The failure to call Dr Sata is compounded by
counsel's failure to have Dr Sata's depositions
of 20 August 1975 transcribed and available
for trial use. The failure to call Dr
Sata was particularly damaging because his
early report--not satisfactory from the
plaintiff's point of view--was dragged through
the case, and yet his later deposition drew
the sting out from the earlier report. In
the absence of the doctor and absence of his

deposition, as incorrect and damaging version of his views were allowed to be presented to the jury. Why?"

p 5/5-19: "7. Medical picture presented to trial court incorrect. A careful reading of the entire body of medical reports and medical depositions reveals that certain physicians, including Dr. Sata, had later, better opinions about the diagnosis, treatment, and prognosis of Mrs Koker's conditions, and the causes of her complaints, than their earlier views. These later views were not brought out by Mr. Betts at trial, to plaintiffs' serious detriment. Particularly troubling is the question of typing up the plaintiff's various physical complaints to the findings by various physicians. The clinical picture was obviously initially confusing not only to Dr. Sola, but also to most of the specialists. Dr. Smersh's testimony, or at least the reading of his deposition, was essential to cut

CP FILE #123 p 244 EXCERPTS *Appeal 9346-1-I*
"Lack Of Standard Of Care"

A-22

the ground out from under defendant's counsel's argument that Mrs Koker's ear problems were unreal."

p 5/20-30: "8. Lack of medical preparation.

Ordinarily plaintiff expects the plaintiff's attorney should work closely with the attending physician, or with a medical consultant, to develop a medical theory ahead of trial to account for the symptoms, or else to reduce the scope of the plaintiff's testimony at trial to those items of complaint for which there is reasonably solid medical testimony as to causal link between the occurrence (car collision, in this case) and the symptoms. Failure to do this work is malpractice in practitioners of Mr Betts' skill and expertise. I see no indication that preparation of this sort took place in this case."

p 8/3-9: "(c) Failure to preserve recapitulation. Mr Betts' written recapitulation in aid of this jury argument was not

CP FILE #123 p 244 EXCERPTS *appeal 9346-1-1*
"Lack Of Standard Of Care"

A-23

preserved, which I regard as both sloppy and dangerous, most especially in a case where the trial itself has been, as this one appears to have been, a picture of muddle. This failure to preserve the recapitulation may have cost the Kokers an appellate decision for a new trial."

p 8/10-16: "10. Failure to call helpful defense medical examiner. Dr Harry Leavitt, the well-known and forsenically experienced orthopod (still in practice) examined plaintiff for defendant and submitted a report that I find generally favorable. He should have been called by Mr Betts to rebut the damaging report by the second defense examiner. The failure to call him seems negligent."

p 8/17-25: "11. Failure to limit second defense medical exam. It is incomprehensible that Mr Betts permitted the defense a second "bite at the cherry" in terms of a CR 35

examination. The second defense exam should have been limited to conditions after Dr Leavitt's exam, and the history-taking should have been similarly restricted. Mr. Betts could and should have insisted that Dr Klemp-
erer, the second examiner, begin with Dr Leavitt's reports, and he should have pre-
vented the defense from burying Dr Leavitt's report and opinion."

p 10/22-30: p 11/1-11: "14. Failure to
explain medical terminology. Competent
bodily-injury trial counsel necessarily assume
that jurors are unfamiliar with medical term-
inology, procedures, practices, pre-concept-
ions &c. In leading a physician through his
testimony, and especially with the first
physician to testify, plaintiff's counsel
must take care to have the physician explain
terms, diagram the relevant body structures,
set out the general diagnostic approach, and,
in general, lecture the jurors--even the

CP FILE #123 p 244 EXCERPTS *Appeal 9346-1-I*
"Lack Of Standard Of Care"

A-25

judge. Mr Betts did not do this. Mr Le Masters, Chief defense counsel, on the other hand, led out a classic direct examination of his expert, Dr Klemperer. The contrast is distressing. I believe that Mr Betts' failure to handle his medical witnesses properly when contrasted with Mr LeMaster's cogent examinations, inevitably had a bad effect on the jury. The significance of test procedures, myelograms, EMG &c., in particular was not set out for the jury's grasp. This inadequate direct examination of the plaintiff's physicians is a noteworthy deviation from acceptable practice and is not explained in Mr Betts' affidavit in support of his motion for summary Judgment."

p 15/17-31; p 16/1-11; "C. CONCLUSION"

"The records in Koker v Sage indicate that plaintiffs' counsel prepared the case inadequately, did not communicate effectively with the principal client, tried the case in a confused manner, omitted critical elements
CP FILE #123 p 244 EXCERPTS *Official 9346-1-1*
"Lack Of Standard Of Care"

A-26

of the order of proof, argued the case ineffectively, failed to present a cogent medical picture, and, in general did not handle the case in accordance with the accepted & applicable standards of practice. As I suggested in Paragraph 5 above, I cannot unequivocally assert that there was unquestionable deviation: there is apparent deviation from the applicable standards. Those deviations might possibly all be subject to being explained away by plaintiff's counsel in the matter. The affidavit in support of summary judgment does not provide such explanation.

My conclusion is that there is a case to be answered, & that it has not been answered, insofar as plaintiff's claims for relief against Grederick V. Betts and his-then partners go."

/s/
Chas. H. W. Talbot

/s/ Lance Knight Notary public
in & for the State of Washington Seattle

CP FILE #123 p 244 EXCERPTS *Appeal 9346-1-I*
"Lack Of Standard Of Care"

A-27

CP FILE #123 P 244 CITED

PHRASES OR SENTENCES WITH
PAGE AND LINE NUMBERS AFTER
EACH FOR LOCATION IN THE
AFFIDAVIT OF LACK OF
STANDARD OF CARE

"- - a disturbing state of affairs." (p 4/7):
"How the jury made sense of that present-
ation is a mystery." (p 4/24-25): "These
later views were not brought out by Mr Betts
at trial, to plaintiff's serious detriment."
(p 5/10-11-12): "Dr Smersh' testimony, or
at least the reading of his deposition, was
essential to cut the ground out from under
defendant's counsel's argument that Mrs
Koker's ear problems were unreal." (p 5/16-20):

"Failure to do this work is malpractice
in practitioners of Mr Betts' skill and
expertise." (p 5/28-29): "The "don't penal-
ize the plaintiff" argument is generally felt
to be weak and unconvincing, especially to
juries not sophisticated in medical matters;

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they believe in medical certainty." (p 6/14-17): "One gathers from Judge Horowitz's comment about the clerk's file being a "skeleton" file that no effort was made by Mr Betts' by way of pre-trial requests - -." (p 7/5-8): "Mr Betts' written recapitulation in aid of this jury argument was not preserved, which I regard as both sloppy and dangerous, most especially in a case where the trial has been, as this one appears to have been, a picture of muddle." (p 8/3-7):

"It is incomprehensible that Mr Betts permitted the defense a second "bite at the cherry" in terms of CR 35 examination. The second defense exam should have been limited to conditions after Dr Leavitt's exam, and the history-taking should have been similarly restricted." (p 8/17-22): "He seems not to have suggested to the jury that plaintiffs were entitled to a money award for anything other than their out-of-pocket-expenses!"

(p 9/7-10):

CP FILE #123 p 244

EXCERPTS *Appeal 9346-1-I*

"Lack Of Standard Of Care"

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"This is unexplained deviation from the applicable standard of practice." (p 9/22-23): "The argument on that point was weak and ineffective, both as it reads in the record, and more importantly, as it is reflected in the inadequate award." (p 10/10-13): "- - Mr Betts not only missed an opportunity to argue for damages for aggravation to Mrs Koker's previously dormant spondylosis, but also played into defense counsel's argument that plaintiff's complaints were not explainable to the physical facts." (p 10/17-21): "The contrast is distressing." (p 11/2-3): "This inadequate direct examination of the plaintiff's physicians is a noteworthy deviation from the acceptable practice and is not explained in Mr Betts' affidavit in support of his motion for summary judgment." (p 11/7-11): "- - the cumulative impression however is that at the least a question is raised as to the deviation from proper standards." (p 11/18-20):

"It is painful to note Mr. Betts inability to be precise in explaining how Mr LeMasters knew that Dr Henriksen was involved in the case." (p 12/17-18): "- - then Mr Betts gave an inaccurate offer of proof - which is inexplicable. A proper offer of proof might have led to an appellate decision in Mrs Koker's favor." (p 13/14-15-16):

"These notes (referred to by Mrs Koker as "The List") were, I am told not prepared for jury purposes and they sound/read as if she were confused. Thus Mr Betts appears to have allowed defense counsel to breach attorney-client-confidentiality, with the result that the defense imundo that she was mentally imbalanced was strengthened. I cannot fathom any purpose in submitting to this." (p 13/29-30: p 14/1-5): "Mr Betts final argument left out important elements." (p 14/23-24): "Either his final argument was ill-prepared, not crafted to include all points

within the allotted time, or else Mr Betts, knowing that the time was insufficient, nonetheless acquiesced--with no objection for the record--in a procedure that he knew would be hurtful to the client's interest. If the case were prepared with even minimum, non-specialist skill, plaintiff's attorney would have known before going to trial what the salient points of this final argument would be. Specialist practitioners begin framing final argument during pre-trial discovery. Mr Betts has been to trial once before on this case. He must have known what he had to cover. (mistrial) (p 14/24-30: p 15/1-5):

"The court file failed to disclose all the depositions that had been scheduled and held. I RP 4."(p 12/6-7): "The deposition of one physician (Henriksen) who treated plaintiff, whose trial testimony was required, was not taken until the evening of the first day of trial, after lengthy discussion with

with the trial judge (I RP 9-17)(p 12/9-12):
"It is painful to note Mr Betts' inability
to be precise in explaining how Mr LeMasters
knew that Dr Henriksen was involved in the
case." (p 12/17-20):

"If Mrs Koker is correct in her state-
ment that she gave Mr Betts a proper summary
of Mrs Conley's proposed testimony by two
letters (reproduced in photocopy extract in
her complaint, pp 7-&8), then Mr. Betts
gave an inaccurate offer of proof--which is
inexplicable. A proper offer of proof might
have led to an appellate decision in Mrs.
Koker's favor." (p 13/10-16):

Please Note: Mr Betts is untruthful
to the judge in the 1976 trial saying he
knew nothing of the third lay witness or
what she would have to say. CP FILE #1
p 697 Appeal 9346-1-I: Paragraph 1.17 thru
Paragraph 1.22: In the RP there is admitting
to receiving letters from Beatrice Koker and
CP FILE #123 p 244 EXCERPTS *Appeal 9346-1-I*
"Lack Of Standard Of Care"

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also misleading the court saying the third lay witness had not been called to testify.

RP "SUMMARY JUDGMENT" June 6, 1980: p 20/5-18:

Please See Appendix A-35 and A-36 following.

These are affidavits of this witness denied by the trial judge 1976, and subject of the inaccurate and untruthful offer of proof by Mr Betts in trial of 1976 - and subject to malpractice.

SUMMARY JUDGMENT DENIED,
MALPRACTICE MR BETTS

The trial court Honorable Judge William C. Goodloe, accepted the "lack of standard of care" affidavit as raising issues for the jury in malpractice. The Court of Appeals reversed a denied summary judgment, without consideration of abuse of discretion by lower court. The expert witness stated an opinion in his 16 page affidavit, reiterated herein Appendix A. The Court of Appeals chose to ignore 431 lines of an affidavit, and base their reversal of denied summary judgment on 6 lines of the affidavit. Manifest error. (A-13)
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"Lack Of Standard Of Care"

A-34

STATE OF WASHINGTON)
) SS.
COUNTY OF GRAYS HARBOR)

MILDRED JONES, FORMERLY MILDRED
CONNELLY, BEING FIRST DULY SWORN
UPON OATH, DEPOSES AND SAYS:

That quite awhile before her trial in
1975, Mrs. Koker asked me if I would be willing
to testify in that trial and I was willing to.
She later said her attorney, Mr. Betts, would
contact me. Quite awhile before the trial of
1976, she asked if I was still willing to test-
ify in the next trial and I was. Mrs. Koker
later again stated that Mr. Betts would contact
me.

The last part of May 1976 I was in Aber-
deen and I had to be back to Seattle and home
by June 3 because my Social Security income
check would be there then. While I was still
in Aberdeen, my Mother called and said Mr.
Betts had been out to our home to see me about
my testimony in the trial and said he would be

Affidavit - Typed Copy - Further Proving Untruth
To Judge By Attorney F. V. Betts, Def #1
Re: COMPLAINT CP FILE #1 p 697 - Paragraph
1.17 Through 1.22: Legal Malpractice

A-35

back in a day or two. I left Aberdeen earlier than planned so I could be at home when Mr. Betts returned to see me about Mrs. Koker's trial.

I waited several days in June 1976 getting upset and concerned because the trial date was approaching and I was afraid to leave the house because I might miss Mr. Betts.

Finally, late one afternoon just before the trial, Mr. Betts arrived at my home and talked to me. Upon leaving, he said he would get in touch and from that time I heard nothing more from him.

During our conversation I got the impression Mr. Betts was not for Mrs. Koker.

This affidavit was dictated to Mrs. Koker on the telephone for her to type up.

SUBSCRIBED AND SWORN
before me this 3
day of April 1980
Notary Public in and
for the State of Wash-
ington residing at
Cosmopolis

/s/
Rose Melinkovich

/s/
Mildred Jones Formerly
Mildred Connolly
PO BOX 1821
Home: 913 E 2nd
Aberdeen, Washington
98520

Affidavit - Typed Copy (Cont'd)

A-35(a)

STATE OF WASHINGTON)
) SS.
COUNTY OF GRAYS HARBOR)

MILDRED JONES, FORMERLY MILDRED
CONNELLY, BEING FIRST DULY SWORN
UPON OATH, DEPOSES AND SAYS:

That I was a witness to Mrs. Koker almost
being hit by a car. There was an empty lot to
the alley and my home set up high across that
alley and I could see all the lanes on Aurora
Avenue including all of the left turn lane to
N. 103rd Street at that corner.

I was looking out the frontroom window
watching traffic on Aurora Avenue. I saw Mrs.
Koker come to the corner going south to the
crosswalk and looking both ways carefully and
stood there approximately 3 minutes or more
waiting for traffic to be completely clear.

There were no cars in the left turn lane
on Aurora which turns to N. 103rd going west.
The day was still light and there was no weather
reason Mrs. Koker could not be seen.

Affidavit - Typed Copy - Proving Untruth
To Judge By Attorney F. V. Betts, Def #1
Re: COMPLAINT CP FILE #1 p 697 - (supra)

A-36

Mrs. Koker began to cross. She hadn't gotten quite to the middle of N. 103rd Street in the crosswalk when a car came speeding around and cutting the corner sharply from the left turn lane on Aurora turning left to N. 103rd. The driver was obviously distracted by oncoming southbound traffic on Aurora not to have seen her.

I saw Mrs. Koker raise her cane and shake it to attract the driver's attention. I had never seen her move anything but very slowly since the wreck and I observed that she could not jump nor get out of the way of that car.

I was so sure that the driver was going to hit her that I run to the door and as I run to the door, I hollered at my Mother. "Mrs. Koker's going to get hit by a car." I was so sure he was going to hit her because of the car speed, distance and her crippled condition.

Upon arriving outside in my yard, I found she had not been hit but the car had stopped

(Cont'd) Affidavit - Typed Copy

A-36(a)

about 2 feet in front of her. I saw she was not hurt and I went back into the house.

I waited until I felt she would be home and calmed down a little bit and I knew her habit of lying down after a trip to the store. I then called her and told her I had seen the car almost hit her and told her what I had witnessed.

I would be willing to testify in court at anytime, to my knowledge of Mrs. Koker's condition before and after the accident and to the contents of this affidavit.

This affidavit was dictated to Mrs. Koker on the telephone for her to type up.

/s/
Mildred Jones
Formerly Mildred Connolly
PO Box 1821 - 913 E 2nd Aberdeen, Wash
98520

SUBSCRIBED AND SWORN to before me this

3 day of April, 1980
Notary Public in and for the State of
Washington residing at Cosmopolis

/s/
Rose Melinkovich

(Cont'd) Affidavit - Typed Copy

A-36(t)

NUMERICAL ORDER - CLERK'S PAPERS #9346-1-I

CP FILE #1 p 697: COMPLAINT

✓ CP FILE #86 p 674: Affidavit F. V. Betts In
Support Of Motion For Summary Judgment -
Motion For Cause I Only (And Denied):
No Motion For II III IV and Granted Summary
Judgment.

✓ CP FILE #87 p 672: Summary Judgment Motion

CP FILE #97 p 671: "Predioted Prejudice" By
Plaintiff. Filed March 7, 1980:

CP FILE #99 p 670: Plaintiff Note For & Motion
CP FILE #100 p 664: To Strike Summary Judgment

CP FILE #102 p 663: Plaintiff CR 56 Additional

CP FILE #103 p 662: Plaintiff CR 56 Additional
Matter "Authority" Filed March 19, 1980:

CP FILE #104 p 661: Plaintiff CR 56 Additional
Matter "3-Way Factual Issue Of Credibility"

CP FILE #105 p 659: Order Not To Destroy Records

CP FILE #107 p 415: Plaintiffs' Memorandum in
Opposition To Def #1 Motion for Summary Judgment (192 Pages) Circumstances Necessity:

9346-1-I

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CP FILE #108 p 412: Plaintiffs Index To
Memorandum In Opposition To Def #1

CP FILE #109 p 409: Pl Motion Continuance
To Obtain "Lack Of Standard Of Care" Affidavit
(Conspiracy Of Silence Encountered)

✓ CP FILE #111 p 403: Affidavit (TWO LINES) #1
(NO EXPLANATION) One Letter Attached Is
Evidence Of Conspiracy Calling Off Trial Behind
Court's Back. (CP FILE #117 p 356)

✓ CP FILE #112 p 390: Affidavit (THREE LINES)
(NO EXPLANATION) By F. V. Betts #1.

CP FILE #113 p 387: Motion For Continuance

CP FILE #115 p 386: Order Granting Continuance

CP FILE #116 p 376: Cross-Reference By Subject
Matter to: Complaint, Def #1 Affidavit, And
Beatrice Koker's Memorandum in Opposition.

CP FILE #117 p 356: Exhibits Show Two Attys
Striking Trial Date By Themselves - 9 Days
Later Judge Signs Order Continuance Being
Given False Reason. Proven From Record.

CP FILE #118 p 337: Plaintiffs Memorandum In
Opposition to CP FILE #112 p 390:

CP FILE #119 p 284: Plaintiffs Memorandum
In opposition to Two Line Affidavit Def #1:

CP FILE #120 p 274: Plaintiff Affidavit
Controverting Summary Judgment Motion

CP FILE #121 p 267: Plaintiff's Affidavit
on Lack Of Standard Of Care - and - Dr.
Henriksen Report-Deposition:

CP FILE #122 p 260: Proof of Untruth To
Judge by F.V. Betts. Affidavit of Mildred
Connelly APPENDIX A-35 and A-36 Herein:
Original Affidavit Ex 9 and 10 CP FILE #107
p 415:

CP FILE #123 p 244: Affidavit By Attorney
"Lack Of Standard Of Care"

CP FILE #125 p 229: "Standard Of Care"
Res Ipsa Loquitur - Laymen:

CP FILE #128 p 226: Apology To Court By
Plaintiff: Re: Documents Compelled To File:

CP FILE #129 p 158: Controverting Affidavit

CP FILE #130 p 156: Medical Depositions 1976

CP FILE #131 p 153: Psychiatrist Deposition
Submitted To The Court.

CP FILE #136 p 152: Affidavit Of Dr Einar
Henriksen, Orthopedic Specialist Treating
Plaintiff 4½ years before 1976 trial - after.

CP FILE #142 p 151: Issues For Jury

CP FILE #143 p 150: Jury Demand

CP FILE #146 p 127: Motion Reconsideration

CP FILE #145 p 149: Note For Trial Docket

CP FILE #148 p 107: Additional CR 56

CP FILE #149 p 64: Michael Mines For Def #1
Submitted A Deposition To The Court With 18
Relevant Pages Missing. (CP FILE #130 p 156
Plaintiff Submitted All Medical Depositions
COMPLETE.)

CP FILE #151 p 59: Recusal Letter Of Judge
See: Appendix Herein A-5 And A-6;

CP FILE #153 p 42: Pl Objects To Recusal

CP FILE #155 p 39: Pl Answer Recusal Letter

CP FILE #159 p 29: Depositions Open-Publish

CP FILE #172 p 6: CP FILE #177 p 1: ORDER
HEARING

9346-1-I

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STATEMENT OF THE CASE

Excerpts From Plaintiff

Opening Brief # 9346-1-I

The chronology for the case at bar is
in APPELLANTS CIVIL APPEAL STATEMENT p 14-16:

The nature of the case is there on pages 2-3-4:

Brief p 15/7-27: "A motion for summary judgment was submitted February 25, 1980 by F. V. Betts, et ux, et al, Defendants #1. CP FILE #87 p 672 and was based upon the affidavit of F. V. Betts, which states the motion is only for Cause of Action I, when he is named in Cause I II III IV. CP FILE #86 p 674 ~
his affidavit p 2/9-15: Plaintiff filed a motion to strike the summary judgment motion of Def #1, to clarify their position on whether the motion was as stated for Cause One only, or omissions, or error. CP FILE #100 p 664: At the hearing, the court correctly stated that without a motion for Cause II III IV, those causes would go to trial. It was established at the hearing, the motion of
Excerpts---STATEMENT OF THE CASE

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F. V. Betts was only for Cause I. The Court allowed F. V. Betts to amend his affidavit to include Cause II III IV. The Court ruled to defer hearing the plaintiff's motion to strike until BEFORE oral argument of the summary judgment. RP "MORNING SESSION" "MOTION TO

STRIKE" March 18, 1980 p 12/17-25: p 13/1-3;
p 13/6-9: p 15/1-9: p 12/12-16: p 20/6-11:

*Brief p 18/17-27: p 18/1-16;

THE SUMMARY JUDGMENT HEARING: This hearing was held May 16, 1980. Plaintiff brought up the matter of the motion to strike summary judgment, immediately, as the court had stated it would hear this motion BEFORE oral argument at the hearing to allow Mr. Betts to amend his affidavit. RP "SUMMARY JUDGMENT" May 16, 1980
p 2/5-21: shows the court erred in again deferring the ruling on "motion To Strike" and ultimately did not rule at all, but granted summary judgment Cause II III IV to Def #1 who did not even have a motion for those causes. THIS IS THE FIRST CONFLICT OF THE COURT,

Excerpts --- STATEMENT OF THE CASE 9346-1-1

A-41(a)

granting a summary judgment when he said in
the RP "MORNING SESSION" "MOTION TO STRIKE"

MARCH 18, 1980 p 12/17-23: Quoting:

Mrs. Koker: "But what will I
answer? He Doesn't have any-
thing in here to answer on all
the four causes."

The Court: "Well, as I understand
it, they are only attacking your
Cause No. I."

Mrs. Koker: "So, they are admitting
to the other?"

The Court: "No, not admitting. The
other Causes will go to trial
without a motion."

No affidavit of F. V. Betts was amended.
No motion was ever made for Cause II III IV
for summary judgment. At the onset of the
hearing for summary judgment Def #1, Plaintiff
brought up the subject of "no-motion" immedi-
ately as had promises to be heard by the
court March 18, 1980 supra. And reminded
the Court the motion was only for Cause Of
Action I. The Court then deferred the ruling
on the "motion to strike summary judgment of

Excerpts--- STATEMENT OF THE CASE 9346-1-2

A-42

of Def #1" and ultimately did not rule upon
it at all. RP "SUMMARY JUDGMENT" MAY 16, 1980
p 2/15-21:

* * * Plaintiff did not have objections at
the March 18, 1980 hearing for the court to
allow extra time if Mr. Betts intended the
motion for other than Cause I. It is self-
evident that Mr. Betts made the motion for
Cause I, and remained the motion for Cause I
only. There is no amended affidavit. No
motion for Cause II III IV.

TRIPLE CONFLICT BY COUNSEL
MINES ON SUBJECT OF
"NO-MOTION"

*Brief p 20/11-27: p 21/2-13:

* * * Counsel Mines is in conflict with him-
self three times in the record, in regard
to the subject of "no-motion." (1) Counsel
Mines for Def #1 misleads the court saying
the summary judgment motion covers all
causes of action I II III IV, and then reads
the summary judgment motion to the court in

Excerpts--- STATEMENT OF THE CASE 9346-1-1

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p 8/1-8: HOWEVER, it is significant that the Counsel Mines left off the last line of that summary judgment which is the key to the summary judgment motion being proven to be only for Cause of Action I. In CP FILE #87 p 672 the last line reads:

"This motion is based upon the accompanying affidavit of F. V. Betts."

*** The motion for summary judgment by Defendants #1 refers to the affidavit of F. V. Betts as the basis of the motion. In that affidavit to be found in CP FILE #86 p 674 - his affidavit p 2/9-15: Mr. Betts under oath states the summary judgment motion is only for Cause Of Action I: Quoting:

"This affidavit refers solely to the cause of action #1 of the complaint against this affiant and his partners ..."

*** The counsel first misleads the court in conflict one, supra, and now in conflict (2) Counsel Mines changes his mind and says

Cause II III IV do not need any affidavits because those actions do not state a claim upon which relief can be granted. What Counsel fails to observe is that the affidavit succinctly states the motion is for Cause I only. RP "MOTION FOR RECONSIDERATION" June 6, 1980 - p 8/9-13 and 20-24:

*** Without a motion for summary judgment, what's to rule? Then in conflict (3) Counsel Mines states an amended motion for summary judgment was what should have been filed. RP "SUMMARY JUDGMENT" MAY 16, 1980 p 5/7-14:

*Brief p 16/13-27:

*** Beatrice Koker answered Mr. Betts affidavits to his summary judgment motion which was only for Cause Of Action I. He did not amend nor add nor clarify his original position of a motion for only Cause I, and that is the way it stands to this day. I answered the affidavits to his summary judgment motion line by line, page by page.

Excerpts---STATEMENT OF THE CASE 9346-1-I

A-44 (a)

The brief is 192 pages long and has 12 exhibits. CP FILE #107 p 415: A separate index to this brief was made for the convenience of the lower court. CP FILE #108 p 412:

In this long brief, each section is preceded by a page explaining the line and page and subject matter being answered in that section. A cross-reference by subject was made. CP FILE #116 p 376:

* Brief p 15/24-28: p 16/2-11:

*** " - - the criteria of CR 56 of the affidavit of "standard of care" was met with a conspiracy of silence involved with emotional feelings to some degree, and a continuance was granted by the court. CP FILE #113 p 367: then an ORDER CP FILE #115 p 386:

*** Counsel Mines for Def #1, at that hearing for continuance, presented two irrelevant-to-summary-judgment-affidavits from F. V. Betts. CP FILE #111 p 403; and CP FILE #112 p 390: (but there was no amended

Excerpts---STATEMENT OF THE CASE 9346-1-1

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affidavit regarding the summary judgment motion.) Plaintiff tried to discern what was meant by the Def #1 in their latest documents that had no explanation. In so doing, plaintiff found a further proof of conspiracy and collusion added to Untruth #4 of the Complaint. (supra) And my answered are in CP FILE #117 p 356 - EXHIBITS 5(a) 5(b) (c)(d):
FOR PROOF: and CP FILE #118 p 337; and
CP FILE #119 p 284:

* Brief p 17/15-27: p 18/1-5:

* * * Counsel Mines submitted a deposition of my doctor in a former trial, but deleted 18 pages, which he offered to supply if the court asked. To this plaintiff to divide a sworn document is unthinkable! To avoid such deletion which had omitted important facts regarding this plaintiff's injuries, I submitted the COMPLETE deposition of that doctor, and every plaintiff doctor in the former litigation so that it could not happen again. CP FILE #131
p 153: CP FILE #130 p 156; and Michael Mines
Excerpts---STATEMENT OF THE CASE 9346-1-I

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deleted deposition CP FILE #149 p 64; Dr. Einar Henriksen affidavit is also submitted to the court showing that a doctor who had treated injuries from the falls caused by the injuries from the wreck, and examinations and consultations by a doctor for 4½ years had not been asked for a medical report at time of trial 1976, and the deposition of this doctor taken end of first day of trial! The affidavit of Dr. Einar Henriksen is CP FILE #136 p 152; All the depositions from the trial of 1976 are now opened and published and transferred to the case at bar. CP FILE #159 p 29;

*** Plaintiff filed five affidavits on May 7th and May 8th 1980, controverting, and rebutting, and obeying CR 56. There is a controverting affidavit in addition to the Memorandum opposing: CP FILE #107 p 415; (supra)

CP FILE #120 p 274; Affidavit Re: informing F. V. Betts of testimony of third lay witness with EX 9 and 10 for proof. CP FILE #122 p 260;

Excerpts---STATEMENT OF THE CASE 9346-1-1

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Affidavit re: Lack Of Standard Of Care (Dr
Einar Henriksen Medical Report - Deposition)
CP FILE #121 p 267: Affidavit of "Standard
of Care" CP FILE #123 p 244: Affidavit as
to standard of care to be discerned by "lay
men". CP FILE #125 p 229: The court will
note the entire record reflects supreme
opposition to cause of action I, the malpract-
ice, which is the only cause the affidavit
of F. V. Betts attacks, and no amendment,
no oral motion, in court.

* Brief p 19/15-27: p 20/2-5:

*** RP "SUMMARY JUDGMENT" MAY 16, 1980 the
plaintiff argued Cause Of Action I. The
Court asked the plaintiff to address herself
to Cause of Action II III IV. Plaintiff wanted
to give her prepared argument and asked if
she could give her speech about due process,
material facts et al. The court stated he
would rather have me stick to CAUSE II III IV.
RP "SUMMARY JUDGMENT" MAY 16, 1980 p 32/10-23:
To me, this was a court order and to disobey would

Excerpts---STATEMENT OF THE CASE 9346-1-I

A-47 (a)

be contempt of court. At the end of what he asked in addressing Cause II III IV, plaintiff said: RP "SUMMARY JUDGMENT MAY 16, 1980
p 47/14-24:

Mrs. Koker: "You see, that's all I have with me because I did not expect that I would have to do this, because they didn't even put in a motion for Causes 2,3 and 4. They are only putting in their Motion for Summary Judgment on Cause of Action 1, which they have incorporated there with the things that Mr. Betts did. So I was not prepared for that. That's all I have with me on that subject."

"I feel that the motion should have been - - that they were given ample time to correct it or put an extra affidavit in."

* Brief p 21/14-28: p 22/12-27: p25/8-11:

*** Without a motion, there cannot be a ruling Cause II III IV because the court lacks jurisdiction. With a motion, by law, when one cause is GOOD as in Cause I herein, the other Causes II III IV go to trial. The summary judgment rulings of the court with or without a motion appear in the RP

"SUMMARY JUDGMENT" MAY 16, 1980 p 59/3-16; and
Excerpts---STATEMENT OF THE CASE 9346-1-2

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p 59/17-25: p 60/1-18:

*** This shows the court ruled on "specific Examples" of Cause II, calling those "SPECIFIC EXAMPLES" allegations. The allegations are in the COMPLAINT CP FILE #1
p 697: Paragraph 2.3:

*** In CP FILE #1 p 697 Cause Of Action I
Paragraph 1.1 Through Paragraph 1.89 and
CAUSE OF ACTION II Paragraph 2.1 Through 2.58
are identically pleaded and both defendants appear in the same capacity. The court states he uses the same approach to the allegations of Cause I and II.

*** Approaching both Cause I and II in the same identical way as the court has stated supra, how then could he deny Cause I, and grant Cause II which did not even have a motion, but which in essence he ruled "specific examples" and called them allegations showing the error and/or mistake.

RP "SUMMARY JUDGMENT" MAY 16, 1980 p 59/17-21:

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The court is trying to make "issuables" out of the "specific examples" which are for the purpose of proving the allegations. The court tried to find issuables in specific examples with proof, instead of addressing attention to the allegations of the misdeeds and wrongdoing prevelantly displayed in paragraph 2.3 of the Complaint, supra.

*Brief p 25/12-27: p 26/3-28:

* * * In ruling on Cause of Action III and IV the court indicated they were neither intentional torts. "RP "Summary Judgment"

May 16, 1980 p 59/24-25: p 60/1-18: The court ruled on the question of "intent" which is only for the jury. The court ruled erroneously again by depending upon what he understod I had said in answer to a question replying: "I doubt it." I correct the court saying "I really don't know." But the court would not accept the myriad of "it is only for the trier of the fact" over and over.

The record is devoid of anyone saying "I

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doubt it." Therein, is an error of the court two ways. He uses that "I doubt it" alone for a ruling of such finality as summary judgment. Manifest error. Quoting from the record for accuracy. RP "SUMMARY JUDGMENT" MAY 16, 1980 p 43/13-18; The court asks if Beatrice Koker thought Mr. Betts did intentionally. I answered the Court:

"I don't know why he did it, your Honor, I can't say he did it intentionally. I would say that would be for the trier of the fact to determine. And that's what I have said all along, that it's for the trier of the fact."

* * * The case at bar concerns what Def #1 and Def #2 have done to me. It is not this plaintiffs nature to "categorize" the circumstances of the case at bar to be affiliated to all actions by the two attorneys involved. Nor do I "categorize" the profession by what happened to me caused by these two professional men. Nor do I "categorize" the courts with a blanket opinion just because I have

been seeking justice for so long. Respect is imperative in my life. Respect for others, their respect for me. But most important is my respect for myself. This is the background for oral argument in the record where Beatrice Koker says: RP "SUMMARY JUDG-
MENT" MAY 16, 1980 p 55/22-25; p 56/1-3:

"And I think that people who are guilty of these wrongs, when they have been made to pay the redress and remedy, maybe they will feel better, too. I don't see that these people WANT to go about doing harm deliberately. I think this is something that they did, and maybe they regret it, I do not know. I know I regret it. I regret that they did it because I live with it, every day."

* * * "Intent" by rule and law is only for the trier of the fact. The plaintiff is shocked by the ruling of the court on Cause II III IV. The main concern for the moment is another "concealment of concealment" withholding true facts from the jury. I asked the court a question and received an answer

that the elements of Cause II III IV would be staying in the malpractice Action I.

RP "SUMMARY JUDGMENT" MAY 16, 1980 p 61/8-13:

Mrs. Koker: "Did you notice in all of my pleadings and everything that I have said that civil rights and outrage are the result of Cause Of Action I and 2?"

The Court: "I think that's right. And what I have in mind is that, in allowing the malpractice to stay in court, those may be elements of that action."

THE JUDGE CHANGED HIS MIND

*Brief p 27/9-28:p 28/3-27:

*** The "MOTION FOR RECONSIDERATION"

CP FILE #146 p 127 was filed by plaintiff, pleading with the court for a change of ruling. There was no motion upon which to rule Cause II III IV. "Intent" is only for the trier of the fact. The plaintiff reminded the Court that when one Cause is "good" the others go to trial. CP FILE #146 p 127 - Plaintiff Document p 9/26-32:

Excerpts--- STATEMENT OF THE CASE 9346-1-1

A-52

*** In final desperation "MOTION FOR
RECONSIDERATION" ADDITIONAL CP FILE #146

p 107 was also filed. Plaintiff was under belief all elements of Cause II III IV would be made a part of Cause I, the malpractice, and therefore the jury would get a picture of the allegations and wrong, status quo. The reconsideration ruling is RP "RECONSIDER-
ATION" JUNE 6, 1980, p 19/9-12; p 19/12-16;

The rulings of reconsideration are different than the ruling in summary judgment. All the elements are removed. The "not intentional torts", become "not properly pleaded" for Cause IV, and no ruling for Cause III. Cause II remains "not issuable" on the "Specific Examples" instead of ruling on the allegations.

*** Beatrice Koker could not tolerate the concealment of deceit again and told the court the concealment of deceit of the attorneys would be concealed again if he granted summary

judgment and that it was of great concern.

RP "RECONSIDERATION" JUNE 6, 1980 p 5/25:

p 6/1-6: p 7/19-23:

*** "PREDICTED PREJUDICE" in CP FILE #97

p 671 is in regard to division of joint-tortfeasors, would separate the "Multiple Grounds Not Separable." RP "MOTION FOR RECONSIDERATION" JUNE 6, 1980 p 5/11-26;

JOINT-TORTFEASORS: In oral argument

RP "MOTION FOR RECONSIDERATION" JUNE 6, 1980

p 5/11-20: the plaintiff voiced her many written statements that there are multiple grounds not separable, that Mr. Betts is involved in all four Causes of Action, and Mr. LeMaster is involved in three Causes Of Action, and they are joint-tortfeasors in wrongdoing and in concert of misdeeds. In CP FILE #153 p 42- p 8/23-31: Beatrice Koker tells the court how puzzled and disturbed she is about the rulings of the court. That by dismissing Def #2 there is protection of Defendants #1. Objections were made.

Excerpts--- STATEMENT OF THE CASE 9346-1-1

A-53 (a)

*** In oral argument the plaintiff tells the Court the burden of proof has not been met by Defendants #1, and they did not present evidence on the issue of material facts. When the plaintiff had proven there are material facts, above and beyond the call of duty in CR 56. RP "SUMMARY JUDGMENT MAY 16, 1980
p 55/12-14:

*Brief p 23/19-28:

*** CP FILE #1 p 697: Paragraph 1.57 Lines

25-31: states cause of Action II applicable

here in Cause of Action I against Def #1.

Multiple Grounds Not Separable. Paragraph 1.55

(a) states Cause of Action I and Cause of Action II is applicable to the entire cause of Action I against defendants #1. Counsel Mines for defendants #1 in RP "SUMMARY JUDGMENT" MAY 16, 1980

p 31/21-25 says:

"I have lumped Causes of Action I and 2 together in my argument pretty much, because they are interrelated as to the effect on the case of malpractice."

THE RECUSAL:

*Brief p 29/2-6: and 23-28:

"At the end of the "MOTION FOR RECONSIDERATION," June 1980 Honorable Judge William C. Goodloe, Preassignment Judge of the case at bar, recused himself from Cause 864 509, Superior Court. RP "RECONSIDERATION" JUNE 6, 1980 p 24/17-25: p 25/1-25: p 26/1-25: p 27/1-21:

RECUSAL LETTER: Honorable Judge Goodloe presented his recusal letter at the motion for reconsideration hearing. The letter is filed: CP FILE #151 p 59: The plaintiff's objections are in the CP FILE #153 p 42: and CP FILE #155 p 39: before ruling, before recusal in "reconsideration" court was talking settlement on appeal.

*Brief p 30/3-27: p 31/2-28:

LAST CHANCE TO CHANGE THE COURT'S MIND:

Beatrice Koker submitted CR 56 Additional Matters to be ruled on before hearing regarding

Excerpts--- STATEMENT OF THE CASE 9346-1-I
A-55

signing the order. CP FILE #172 p 6: The plaintiff reminded the court of the ways this summary judgment must be denied Defendants #1. They cannot be granted a summary judgment without a motion, and even if the motion had included Cause II III IV - Cause I is "good" and the others go to trial. Plaintiff quoted 4 WASHINGTON PRACTICE 316 CR 56 20, to the Court in the CP FILE #172 p 6 - Plaintiff Document Page 6: The trier of the fact should have been awarded Cause I II III IV by law.

*** The additional matter concerned the conspiracy and collusion and deceit and concealment et al of Cause of Action II. That the very nature of the case and the defendants position of superiority demanded the trier of the fact. In the CP FILE #172 p 6 - Pl Document p 6/1-3; p 5/30-31-32; QUOTING:

"Concealment is the issue regarding the "intent" and this is only for the determination of the trier of the fact. Yet the court has granted summary judgment, questioning the plaintiff. I object to such a

question on the grounds that I am not the trier of the fact, and respectfully neither is the court in a summary judgment ruling."

***, The Court is reminded in CR 56 additional matters that he has removed the elements of Cause II III IV and that Beatrice Koker cannot be a party to concealment. That to appear in a trial with a remnant of a case is to appear before a handicapped jury because the true facts will be withheld.

The plaintiff quoted from COMPLAINT
CP FILE #1 p 697 proving the complaint alleged Cause of Action I and II are intentional misdeeds resulting in Cause of Action III and IV. Found in Complaint supra Paragraph 3.3 - 3.4 - 4.22: Speaking of the deeds and misdeeds of Cause I and II, and relating back.

*** Plaintiff made her oral motion plead for the court to change his mind to no avail. The order was signed. The court adhering to the prior rulings in summary judgment and motion
Excerpts--- STATEMENT OF THE CASE 9346-J-I

A-56(a)

for reconsideration in conflict, without a motion, contrary to law with or without a motion. Plaintiff objected to the order being signed. The Court took note of the objection, and signed the order. See: RP

"THE ORDER" SEPTEMBER 3, 1980 p 2/7-8: p 5/11-14: p 5/14-21:

*** The order in CP FILE #177 p 1:

Beatrice Koker paid \$67.00 for the supplementary Clerk's Papers for certification of the record, proof of service, and docket numbers:

SEE: CP SUPPLEMENTARY FILE 188 p 1; and PRESENTATION CP FILE #188 p 63:

*** Plaintiff presented the Federal Question of due process and denial of Constitutional Trial. SEE: CP FILE #172 p 6 - Plaintiff's Document p 13/19-27: p 13/2-10: CP FILE #153 p 42 - Plaintiffs Document p 8/15-22: p 12/24-32: p 13/13-17: p 13/27-31:

*** The Court did not rule on "material facts", nor even mention material facts, yet

Excerpts--- STATEMENT OF THE CASE

9346-1-I
A-57

the order is granted as "it appearing that there is no genuine issue of material fact with respect to Cause II III and IV, Defendants' motion for summary judgment with respect to Causes II III and IV is granted..."

*Brief p 14/3-19:

* * * The case at bar is complex, lengthy involved, repugnant and a precedent case. - - Both cars were insured by the same company in the wreck of June 1971, in which Beatrice Koker is the victim of permanent injuries, including a drop foot injury to wear a leg brace for life, permanent cervical injury, and knee injury et al, and injuries from falls caused by the original injuries. The jury awarded \$4,600. from a confused jury as per affidavit Exhibit 1 CP FILE #1 p 697:

* * * RYAN V WESTGARD 12 Wash App 500 (1975) the court of appeals states \$145,000. is "within the bounds of sensible thought" for a drop foot injury.

Excerpts---STATEMENT OF THE CASE 93 ⁴⁶⁻¹⁻⁷ A-58

Error 1: "Summary Judgment - First Ruling"

The trial court erred in granting summary judgment to Defendants #1 Cause II III IV without a motion, and with or without a motion to grant this summary judgment is contrary to law, fact, rule and evidence of this case at bar. THERE ARE MATERIAL FACTS. ET AL.

Error 2: "The Reconsideration - Second Ruling"

The trial court erred in denying plaintiffs' motion for reconsideration, thus affirming the Court's error granting summary judgment cause II III IV to defendants #1, and the ruling is contrary to law, fact, rule, evidence, with or without a motion. THERE ARE MATERIAL FACTS, QUESTIONS OF FACT, ISSUES OF CREDIBILITY.

Error 3: "The Order"

The trial court erred in signing, entering and filing the order for granting summary judgment to defendants #1 Cause II III IV, contrary to law, fact, rule, evidence, and the Constitution of the United States, with or without a motion,

ASSIGNMENT OF ERRORS - APPEAL 9346-1-I

A - 59

over plaintiff's objections noted by the court. THERE ARE MATERIAL FACTS, ET AL.

Error 4: "CONFLICT OF THE COURT -
CONFLICT OF COUNSEL"

The trial court erred in granting summary judgment to Defendants #1 with or without a motion, done in conflict rulings of the court and conflict presentation by defense counsel for Def #1 Cause II III IV.

Error 5: "Deferring Ruling Second Time -
Ultimately No Ruling"

The trial court erred in deferring ruling SECOND TIME on plaintiffs' motion to strike, and ULTIMATELY the court did not rule at all, and in addition granted summary judgment Cause II III IV to Defendants #1, which with or without a motion is contrary to law and is error.

Error 6: "Obstruction Of Justice" "Twice"

The trial court erred in granting summary judgment to Defendants #1 Cause II III IV contrary to law with or without a motion, and

thus by court order there is obstruction of justice TWICE.

Error 7:

"A Trial Is Necessary"

The trial court erred in granting summary judgment when there are material facts and no indication plaintiff would not prevail at trial, and every indication she would prevail at trial, and the court in error, with or without a motion, dismissed allegations of conspiracy et al, questions of fact, issues of credibility, material facts, complex questions, intent, doubt, controversy et al, only for the trier of the fact and in so-doing disregarded public trust and public policy, DENYING REIMBURSEMENT TO TAXPAYERS BY RULINGS.

Error 8:

"Denial Of Due Process To
Constitutional Trial"
"Obstruction Of Justice"

The trial court erred in granting summary judgment to Defendants #1 with or without a motion Cause II III IV, denying plaintiff a Constitutional trial, which is a trial "fully and fairly heard in a meaningful manner", and by court

order compelling "concealment of concealment" and withholding true facts from the jury.

Error 9: "Light Most Favorable To
Non-Moving Party"

The trial court erred in granting summary judgment to Defendants #1 Cause II III IV with or without a motion, and did not use the light most favorable to plaintiff when the court bypassed material facts, inferences, presumptions, evidence, facts, all in escrow for trier.

Error 10: "Pleadings" "Pleadings - Intent"

The trial court erred in granting summary judgment to Defendants #1 with or without a motion, and ruling on pleadings Cause II using only "Specific Examples" without ruling on separately listed allegations in the evidentiary complaint; in Cause III IV, the court first ruled "intent" then ruled on pleadings, error in both.

Error 11: "Divided They Fell"

The trial court erred in dividing joint-tort-
ASSIGNMENT OF ERRORS - APPEAL 9346-1-I

A-60 (a)

feasons in their precedent wrongdoings, and results of wrongdoings, contrary to law, with or without a motion; leaving unresolved issues and facts to perish, destroying "Multiple Grounds Not Separable" all about which BOTH PARTIES ARE LITIGATING, in the identical capacity.

Error 12: "Untimely Recusal" "State Courts"

The trial court erred in recusal AFTER all proceedings of two summary judgments were completed, and recusal combined with other legal aversions lead to question of whether there can be justice in the Washington State Courts.

Error 13: "Advising And Influence Of Court"

The trial court erred in advising, influencing, of settlement or otherwise, BEFORE making the ruling in motion for reconsideration and BEFORE recusal, and also after both, in a later hearing.

ASSIGNMENT OF ERRORS - APPEAL 9346-1-I

A. 60 (4)

Federal Question

RECORD DEF-ONE ONLY

CP FILE #153 p 42:

My p 12/1-5:

"There is a fundamental right for this plaintiff to have the elements of wrong in her trial in Cause II left for the trier of the fact to determine. Without which, there cannot be a fair trial because there will be evidence withheld by dismissal on summary judgment."

p 4/26-31:

"But the fact remains, judgments and orders on summary judgment and reconsideration and all other rulings and decisions of the motions of defendants and plaintiff regarding summary judgment have been done to the detriment of this plaintiff in the rulings adverse to the major portion of her cause of action." "The complaint is evidentiary. There is proof of fact."

p 12/30-32:

"This plaintiff finds herself in the position of being unconstitutionally deprived of 3 causes of action against both defendants in ruling, orders and decisions."

p 13/13-20:

"Proven allegations in an evidentiary complaint must not be removed from the trial. That is denial of due process and prevention of a fair trial "fully and fairly heard" in a meaningful manner. Withholding evidence of wrongdoing as alleged is not fully and fairly heard."

p 6/31:

"CALL FOR HELP: WHO PLEASE
WILL PROTECT MY RIGHTS?"

A-61

FEDERAL QUESTION
FROM RECORD OF
DEF-ONE ONLY

CP FILE #172 p 6:

My p 17/17-19:

"There was denial

of equal protection under the law in the trial of 1976 because no trial has a steady diet of quasi judicial officers of the court telling untruths to the judge and jury."

p 19/31-32: "I respectfully implore this court to allow the trier of the fact the rightful place by law to adjudicate and determine this case."

p 20/25-28: "This plain fact will be backed by public interest that trials must be heard in full, fair and meaningful manner with the truth, the whole truth and nothing but the truth therein."

p 13/24-27: "This plaintiff cannot compromise her right to a trial, but must plead for recognition before it is too late, that only the trier of the fact has the right to verdict the damages of the proven wrong in the case at bar in all four causes I II III IV."

p 13/2-7: "The fact of the security under the Constitution of the United States that each and every citizen is guaranteed the truth in a court of law and when the truth is betrayed as alleged, by the quasi judicial officers of the court pledged to uphold the Constitution and all that it stands for, there is distress, anguish, outrage, intolerable in a civilized community."

A-62

CP FILE #119 p 284:

Petitioner's p 16/23-27: "The intention and purpose of the Constitution of the United States is that no one shall be denied the right to a trial. The description of that trial is one to be "fully and fairly" heard. The case at bar held deceit and untruths and alleged deviousness and subterfuge and concert."

ORAL ARGUMENT
SUPERIOR COURT
DEF-ONE

RP "SUMMARY JUDGMENT" MAY 16, 1980:

p 10-16: "'Why didn't your attorney help you? That is because all people - - all people--when they get into trouble the first thing they do is go to an attorney. We look to them as the protectors of all our rights. There's the Constitution, yes, but without the attorney the Constitution could not be enforced. And I'm saying that under the Constitution I did not have protection from my attorney who has a duty by law."

p 55/4-11: "I feel that under the due process of law I must have a trial on this. And I feel for them, too. They should have a trial to have this determined. That's why I say: "WHY?" And I have never attacked Mr. Betts' ability, as you know. It's that he did not use his ability, his obvious ability, for me. Now why he didn't do that has to be determined. It cannot be just dismissed here. I have given you material facts, issues of credibility."

ORAL ARGUMENT
DEF-ONE only

RP "SIGNING OF ORDER" SEPT 3, 1980:

p 5/7-10: "If that's what you intend to do, then I'll have to appeal with all my might; and my right to a trial I must protect. My forefathers protected my right to a trial, and now here I am fighting to protect it too."

THE APPEAL #9346-1-I
DEF-ONE

p 6/17-25: "Appealing the denial of due process to a Constitutional trial, which means a trial fully and fairly heard in a meaningful manner. Such a trial is not possible when Cause II III IV have dismissed the issues only for the trier of the fact, and escaped the co-defendants, joint-tortfeasors involved in alleged deceit, concealment, conspiracy and collusion, obstruction of justice and all other."

p 6/27-29: "Appealing a court order granting summary judgment to Def #1 Cause II III IV, and leaves in the wake "concealment of concealment" by removal of evidence demanded by due process."

p 11/5-6: "But a court order is a powerful adversary when that court order is contrary to law."

p 11/12-15: "This appeal is made because of necessity of rectifying now numerous wrongs, a necessity by Constitutional promise for redress and remedy. This plaintiff is owed a debt . . . "

Federal Question

THE APPEAL #9346-1-I

Def-One Only

p 10/11-20: "... Appeal is under, also section 1103, bias of a decision maker: Section 1160(a) reasonable doubt, the validity of the judgment; abuse of discretion, obstruction of justice, prejudice and bias, and all other constitutional guarantees of court proceedings and rights of citizens and justice appealed for herein, and any and all rules and law and authority that apply."

THE CIVIL APPEAL STATEMENT

p 8/4-12: "The dismissal of three causes of action only for the trier of the fact, by law, leaves a question. Dividing joint-tortfeasors in allow-in alleged conspiracy and collusion et al, leaves a question. The denial of a trial under the Constitution that must be in a "fully and fairly and meaningful manner," and is coerced into a summary judgment grave of dismissal, concealing the concealment, by court order, leaves a question. There is question that a jury is deprived of their function by ruling and order of the court."

p 23/8-10: "There is issue that plaintiff followed CR 56 Rule of summary judgment and Def #1 did not follow Rule CR 56."

p 47/11-12: "There is issue for review that there cannot be due process in the courtroom without truth."

Federal Question

THE CIVIL APPEAL STATEMENT
APPEAL #9346-1-I Def-One

p 40/12-22: "There is issue for review in the method of denial of due process under the 14th Amendment, and denial of a trial. This plaintiff is not suggesting nor alleging there was not notice or that she was not heard in the court proceedings.

This plaintiff is stating emphatically that my Constitutional rights are being denied by granting of Summary Judgment to Def #1 in Cause II III IV, with or without a motion, because that ruling and order of the court denies the evidence of proof of misdeeds to be heard before the trier of the fact, according to the law of the land that a trial must be heard in a way fully and fairly and in a meaningful manner."

PRO SE

p 51/26-30: "There should be no need for a non-attorney to go into a court, when the protection is provided in the legal profession. In the case at bar, the plaintiff found protection lacking, and deceitful and untruth. In which case, there is no recourse but to be one's own attorney."

"Attorneys have made me pro se."

p 59/18-21: (K): "Relief sought in court of appeals a definite ruling on the Federal Question. That federal question being denial of due process by denying plaintiff a trial that can be fully and fairly heard in a meaningful manner."

CIVIL APPEAL STATEMENT
APPEAL #9346-1-I Def-One

p 38/27-32: "Attorneys are not classified as "under color of law". In the case at bar the misdeeds of the attorneys in and out of a court of law, infringed upon my legal rights in deporting honesty and obstructing justice and loading the courts with untruths that this plaintiff and the public would find repugnant." "Section 1985(2) 35. 42 U.S.C.A. says it all for Cause III."

p 39/19-23: "In COFER V COUNTY OF PIERCE 8 Wash App 258 (1972) it states that a summary judgment is a valuable procedure for cutting through sham claims and defenses, but it may not encroach upon a litigants' right to place his evidence before a jury of his peers."

p 39/30-32: "There is issue in that there is a court order of legal disappearance of evidence to help the wrongdoers escape, leave, vanish and deny the plaintiff her right to a Constitutional Trial fully and fairly heard in a meaningful manner."

p 40/3-10: "There is issue for review that the same Constitutional Right applies to Defendant #1, the right to go to trial, to be heard in his own defense, to confront the issues and the jury, but instead Def #1 turns his back on a Constitutional Trial and skulks out the door of escape by summary judgment which is unconstitutionally granted to him via no motion, and would be contrary to law even with a motion as the case at bar is only for the trier . . ."

A-67

CIVIL APPEAL STATEMENT
APPEAL #9346-1-I Def-One

p 28/26-32: "Why doesn't Mr. Betts want to to trial as a Constitutional right? Does he forsee the self-evident proof of his wrongdoing and know the jury will see it and know it? Mr. Betts could not have escaped Cause II III IV without the help of the court. CR 56 was not kept. The Constitution was not kept. The ruling is contrary to law when only the trier of the fact is qualified to adjudicate the case at bar."

p 30(a)/2-5: "Controversy is only for the trier of the fact."

p 30(c)/13-16: "There is issue for review that proven facts designated by law for the trier of the fact are removed by court order that demands concealment and concealment of concealment by removal of misdeeds and did so without even a motion."

p 36/3-6: ". . . two quasi judicial officers of the court in their mutual and singular misdeeds and wrongdoing contrary to law, caused obstruction of justice to this plaintiff, and became a tort action of the case at bar."

p 36/14-21: 24-26: "There is issue for review that the court has granted both summary judgments to wrongdoers who by the Constitution of the United States owe redress and remedy to the plaintiff." "There is no right by law to grant summary judgment to these two defendants who have floundered about looking for excuses to escape."

THE CIVIL APPEAL STATEMENT
APPEAL #9346-1-I DEF-ONE

p 24/11-14: "There is issue for review that the court order is unconstitutional providing legal limbo of concealment of concealment and therefore the first obstruction of justice has added a second obstruction of justice. . ."

p 26/28-32: "There is issue for review that two quasi judicial officers of the court have denied me the Constitutional guaranty of equality of justice in injuries which result from breach of legal duty and an infringement upon a legal right." "Const art 2 §6; art 5 §21:"

p 29/11-19: "There is issue presented for review that contradictory and impeachable evidence is raised. One example being: How can two defendants with overheard remarks they made, each present a different view of the facts. One says he doesn't remember, or it is not relevant, or he did not say it. The other admits it was said, but denies the truth of it calling it only "attorneys kidding each other" or "attorneys making chaffing remarks." To think of attorneys joking or kidding about conspiracy, or implied agreement of those encounters is an incredible incredibility issue."

p 39/4-7: "There is issue for review that this plaintiff is denied her right to a fully and fairly heard trial in a meaningful manner. . ."

A-69

Federal Question

APPELLANTS OPENING BRIEF
APPEAL #9346-1-I
DEF-ONE

p 59/7-9: "Is there a game of escape of
"Who shall dare to deprive any citizen
of the absolute right to a Constitutional
trial, but is there any law against
trying to?"

p 65/3-7: "A federal question is raised
as to whether there will be a
Constitutional trial that is fully
and fairly heard in a meaningful
manner."

p 9/21-25: "Does a citizen under the
Constitution of the United States have
the absolute right to place full
evidence before a jury of peers fully
and fairly and honestly in a meaning-
ful manner without the shackled bind-
ing of a court order which is contrary
to law and fact?"

p 9/16-20: "The ruling of the court has
denied Beatrice Koker due process
to a Constitutional trial, which is
a trial that is fully and fairly
heard in a meaningful manner. There
is obstruction of justice twice. A
federal question in denial of a
constitutional trial by the error
ruling of the court."

p 48/16-17: "There is such provision in
redress and remedy for such deceit
in the authority of FOUR STAR STAGE
LIGHTING, INC V MERRICK (1977)
392 NYS 297 (4); Quoting p 298:
"section 467 subd. 1, of judiciary
law . . ."

Federal Question

APPELLANTS OPENING BRIEF
APPEAL #9346-1-I DEF-ONE

p 31/19-22: "Plaintiff presented the federal question of due process and denial of constitutional trial."

p 41/10-18: "In the RP "SUMMARY JUDGMENT MAY 16, 1980 p 12/7-18: p 59/1-2: The court used the Causes of Action separately in his rulings and did not rule on the pleadings as a whole. He says:

"I am going to rule on then by the numbers and will identify them for the purposes of my decision."

"But the 1 Annotation to RCW 811 B Pleadings 4.32.040 says that facts alleged are construed without reference to division of causes of action in the complaint. The complaint is to be construed as a whole, regardless of how many causes of action there are."

p 68/25-27: "This plaintiff feels she cannot receive a fair trial in State of Washington because of denial of Constitutional Trial fully and fairly heard in a meaningful manner."

p 69/5-11: "Plaintiff is specifically asking for ruling on Federal Question of denial of due process to a Constitutional Trial, which is a trial that is fully and fairly heard in a meaningful manner, and the contrary to law rulings of the court and the court order compels withholding true facts of concealment and deceit and untruth and misdeeds from the jury."

Federal Question
APPELLANTS OPENING BRIEF
APPEAL #9346-1-I
DEF-ONE

p 50/4-5: "A trial is necessary to determine who did what to whom, when and where and how and why, and the damages and the liability."

p 59/6: "I gratefully claim the Constitution as my defender. All of it."

APPELLANTS REPLY BRIEF
APPEAL #9346-1-I
DEF-ONE

p 67/21-23: "To grant summary judgment Cause II III IV to Def #1 and Def #2 is denial of a trial fully and fairly heard in a meaningful manner."

p 70/6-8: "To separate Cause I II III IV, is to weaken-to-destruction plaintiff's case and shall handicap a jury. Plaintiff shall be denied a constitutional trial, fully and fairly heard in a meaningful manner from court rulings and order, over objections."

p 67/19-21: FEDERAL QUESTION

"Appellant claims ruling on federal question "J" "K" in APPELLANTS CIVIL APPEAL ST. p 57-58-59-60 and in APPELLANTS OPENING BRIEF J AND K p 69."

"PETITION FOR REVIEW"
WASHINGTON STATE SUPREME
COURT #49006-6 (Appeal 9346-1-I)

p 25/ F. CONCLUSION: "Relief sought is a trial fully and fairly heard for Cause I II III and IV against Def #1 et ux, et al Superior Court #864509."

FROM THE RECORD-SUPERIOR COURT
APPEAL #9346-1-I
DEF-ONE ONLY

CP FILE #129 p 158:
Petitioners p 56/7-9:

"A fair trial is public concern and interest because the "long arm protection" of the United States Constitution is a personal birth-right for every American."

p 56/16-19: "As a citizen with legal representation, I had a sentry-guard of justice. Citizens do not understand the law as a lay person, nor the procedure of the courtroom and are in complete trust and reliance upon their attorney and the law of the land."

p 46/21-31: "Cause of Action IV is anguish caused to this plaintiff by two men in an Honorable Profession, pledged to protect the public and fidelity to a client and the image of the legal profession to instill a trust like no other in a litigant. The memories of shock of discovery of deceit in a court of law, and lies to a judge has instilled within me a trauma trust that undermines every trustworthy motive of anyone else. It is my nature to be trusting. Disloyalty and infidelity and alleged deceit and a record filled with concert of action has hurt and outraged and caused mental, emotional, physical hurt."

FROM THE RECORD - SUPERIOR COURT
APPEAL #9346-1-I
DEF-ONE ONLY

CP FILE #129 p158:
Petitioners p 53/30:

"I had hoped for truth and honor
in a court of law."

CP FILE #146 p 127:
Petitioners p 11/13-16:

"There will be public question in
posterity at least, to know why
such acts, omissions, legal wrongs,
deceit, and lies in a court escape
confrontation in a court of law
for trial by the trier of the fact."

CP FILE #148 p 107:
Petitioners p 8/30-31:

"The experience of being betrayed
by legal counsel has far reaching
and long lasting effects."

CP FILE #107 p 415:
Petitioners p 147/2-5:

"Honorable Felix Frankfurter said
an attorney actively engaged in
the conduct of a trial is not merely
another citizen. He is an intimate
and trusted and essential part of
the machinery of justice, an
"officer of the court" in the
most compelling sense." (1959)
IN RE SAWYER 360 U.S. 622, 668

APPELLANTS APPEAL
#9346-1-I
DEF-One ONLY

p 6/30-31: p 7/1-11: "Appealing dismissal of Def #1 in Cause II III IV as denial to public trust and policy not being reimbursed for two trials that the taxpayers paid for (unknown to them) when both trials were a waste of taxpayers money. In this way: The mistrial of 1975 totally unnecessary, proven from the record, and the trial of 1976 in which deceit and untruth and concealment and corruption of a trial is alleged and proven. Honorable Judge Dixon was quoted in a news media as estimating the cost of a trial is approximately \$3,000. per day. Defendants #1 and Defendants #2 owe the public approximately \$21,000. for the aforementioned court proceedings, which are now dismissed on summary judgment leaving the taxpayers, THUS PUBLIC TRUST, involved in the case at bar."

DAMAGES
COMPLAINT

Identical Complaint

CP FILE #1 p 697 - Appeal #9346-1-I #1
CP FILE #1 p 425 - Appeal #8935-8-I #2

Paragraph 2.58/30-32:

"I ask in damages that the County of King in the State of Washington be reimbursed for trial costs and charges, mistrial 1975 & trial of 1976."

APPELLANTS CIVIL APPEAL STATEMENT

p 47/2-3: "There is issue for review that an officer of the court has duties both private and PUBLIC."

A-75

APPELLANTS CIVIL APPEAL
STATEMENT APPEAL #9346-1-I
DEF-ONE

p 12/17-18: "The nature of the case at bar could become a class action because the subject matter concerns any citizen."

p 12/26-32: "By granting summary judgment to Def #1 and #2, the court has denied citizens reimbursement of their right because they paid for trials that are a disgrace to the Constitutional right to have a trial of truth. . . ." The citizens have a right to stop the wrongdoers from profitting from a wrong at the expense of a citizen. Granting summary judgments removed this debt to society and people. Not paid."

p 27/25-29: CR 56 Wash Court Rules Annot p 47 16. designates when a summary judgment is improper and say, that the reasonableness of a party's acts is a question of fact, and it is a MATERIAL ISSUE in resolving litigation, and granting of summary judgment is improper."

p 28/16-21: "There is an issue of an intentional interference with a right without lawful justification, which as such is malicious in law. The attorneys are trained, taught, educated in integrity and have a fiduciary duty and duty to the PUBLIC and the court and law of the land."

p 36/31-32: "To lie is to deceive. To lie is to obstruct justice."

APPELLANTS CIVIL APPEAL
STATEMENT APPEAL #9346-1-I
Def-One

p 37/9-12: "To dismiss the wrongdoers is to betray PUBLIC TRUST in the honesty of the profession more so than to bring to task those who have committed the wrongs."

p 46/2-5: "There is issue for review that PUBLIC TRUST and PUBLIC POLICY shall be destroyed in the wake of removing misdeeds at will from the ears of the jury, thus prohibiting a trial of Constitutional value."

p 46/11-15: "There is issue to review in that PUBLIC TRUST and POLICY is involved in the case at bar and the release of the defendants and granting summary judgment contrary to law is a loss to the PUBLIC of approximately \$21,000."

p 46/17-20: "There is issue for review that any public citizen as a litigant has the inherent right to an honest trial and honest representation and honest opposition."

p 46/22-28: And 30-31: "There is issue to review who is protecting those who have committed misdeeds together and alone that are repugnant to the heritage of justice left to all PEOPLE, and the Oath of an Attorney that is defined to protect PEOPLE, and the CPR so laboriously assembled throughout the land to insure that the PROTECTION OF THE PEOPLE WILL BE UPHELD." . . .
PUBLIC TRUST IS BETRAYED"

APPELLANTS OPENING BRIEF
APPEAL #9346-1-I

p 44/26-28: "Do the facts and proof of this case shock the appellate conscience that the rights of "PEOPLE" can be so violated and discarded, and courts so disrespected and the law desecrated?"

p 50/26-27: "The PUBLIC expects trial to be sanctity of truth. The PUBLIC shall never understand how two attorneys could have failed so."

p 50/15-16: "GOD HELP US ALL IF TWO QUASI JUDICIAL OFFICERS OF THE COURT BE ALLOWED TO HARM A CITIZEN INSTEAD OF PROTECT THE PEOPLE."

p 9/5-8: "Has the Constitution of the United States dedicated to rights of PEOPLE and PROTECTION OF CITIZENS been violated in allowing to escape of redress and remedy through error of the court ruling and order . . .?"

APPELLANTS REPLY BRIEF
APPEAL #9346-1-I

p 69/17-18: "Beatrice Koker is betrayed by two members of the legal profession entrusted with protection of citizens."

p 25/First Paragraph: "A wise PUBLIC POLICY according to the Constitution may require higher standards to be adopted than those minimally tolerated. Attys have duty to protect and nurture PUBLIC ISSUE OF TRUST AND HONOR OF THE COURT AND INTEGRITY OF LEGAL PROFESSION. USCA CONSTITUTION AMENDMENT 14 251: 5 AM JUR 36 §551 Footnote 4: 14 CJS §92 Ptnt 19:"

82 - 1947

NO. _____

FILED
MAY 3 1983

ALEXANDER S. SUTHERS
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

ERICH KOKER and BEATRICE E. KOKER,

APPELLANTS

VS

FREDERICK V. BETTS and JANE DOE BETTS,
his wife, and their marital community,
and SKEEL, McKELVY, HENKE, EVANSON &
BETTS, Law Firm Of Frederick V. Betts,

APPELLEES

AND

KENNETH L. LeMASTER and JANE DOE
LeMASTER, his wife, and their marital
community, and SAFECO INSURANCE COMPANY
OF AMERICA, and GENERAL INSURANCE COMPANY
OF AMERICA, and FIRST NATIONAL INSURANCE
COMPANY OF AMERICA.

APPELLERS

A-P-P-E-N-D-I-X

JURISDICTIONAL STATEMENT

ON APPEAL FROM THE COURT OF APPEALS
DIVISION I AND THE SUPREME COURT OF
THE STATE OF WASHINGTON

Beatrice E. Koker
Erich Koker
Pro Se

939 N. 105th St.
Seattle, WN 98133
(206) 783-6998

APPENDIX "B"

*I do Certify.
all veroning to
be true copies.
Beatrice Rober*

DEF/RESPONDENT #2 ONLY

Appeal - - - - - #8935-8-I

Supreme Court State - - - - - 48900-9

Copy United States Court Appeal B
(5 Pages And Attachments)

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Judge Goodloe

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DIVISION I

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SUPREME COURT
STATE OF
WASHINGTON

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IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

ERICH KOKER and BEATRICE
E. KOKER, husband and wife,
Plaintiffs/Appellants/
Petitioners,

V

FREDERICK V. BETTS and JANE
DOE BETTS, his wife, and
their marital community,
and SKEEL, McKELVY, HENKE,
EVANSON & BETTS, Law Firm
Of Frederick V. Betts,

Defendants #1

RESPONDENTS #1

KENNETH L. LeMASTER and
JANE DOE LeMASTER, his wife,
and their marital community,
and SAFECO INSURANCE COMPANY
OF AMERICA, and GENERAL INS-
URANCE COMPANY OF AMERICA,
and FIRST NATIONAL INSURANCE
COMPANY OF AMERICA.

Defendants #2

RESPONDENTS #2

NOTICE OF
APPEAL FROM
STATE COURT,
CIVIL CASE

FROM

COURT OF
APPEALS-STATE OF
WASHINGTON
#8935-8-I
DIVISION I
DEF/RESPOND-
ENTS #2

AND

STATE SUPREME
COURT OF THE
STATE OF
WASHINGTON
#48900-9
DEF/RESPONDENTS
#2

FROM:
SUMMARY JUDGMENT
PROCEEDING

DATED:
January 27, 1983

NOTICE OF APPEAL TO THE SUPREME
COURT OF THE UNITED STATES

Notice is hereby given that Beatrice E. Koker
and Erich Koker, the above named Plaintiffs/
Appellants/Petitioners hereby appeal to the

Notice OF APPEAL DEF/RESPONDENTS #2

B

to the Supreme Court of the United States from the final judgments of the Court of Appeals Division I and the Supreme Court of the State of Washington.

"APPEALING FROM"

APPEALING FROM: The final judgment of a granted summary judgment AFFIRMED in the Court of Appeals Division I, State of Washington, Cause II III IV, to the defendants/respondents #2 - Kenneth L. LeMaster et ux, et al. APPEAL: 8935-8-I:

APPEALING FROM: The denial of motion for reconsideration Cause II III IV by the Court of Appeals Division I, State of Washington.

Appeal: 8935-8-I:

APPEALING FROM: Denial of petition for review in the State of Washington Supreme Court, disregarding and/or evading the fact four considerations to the court by rule were met by petitioner. Petition 48900-9:

APPEALING FROM: Constitutional denial for

NOTICE OF APPEAL DEF/RESPONDENTS #2

B

for reconsideration-rehearing for denial of petition for review in two ways: (1) Unconstitutional to repeal rehearing of Statute RCW 2.04.160, (2) Disregarding, ignoring, evading discretionary ruling for rehearing, or RAP 1.2(a) for "JUSTICE." Clerk of the Supreme Court of the State of Washington "filing motion and no further action" on reconsideration-rehearing and Clerk's ruling upheld by State Supreme Court. Under facts, a denial of Constitutional right. And there are others.

STATE CONSTITUTION ARTICLE 4, §1: PETITION
48900-9:

ATTACHED: SEE: APPENDIX B-7: B-11 Thru B-14:

JUDGMENTS ENTERED: COURT OF APPEALS DIV I:

AFFIRMING A GRANTED SUMMARY ... July 6, 1982:
JUDGMENT CAUSE II III IV:

RECONSIDERATION DENIED: Aug 5, 1982:

STATE SUPREME COURT OF WASHINGTON

PETITION FOR REVIEW DENIED . . .Nov 8, 1982:

MOTION TO GRANT OR DENY // . . .Jan 7, 1983:
REHEARING NOT RULED:

EVADING * REFUSED IDENTITY . . Nov 5, 1982:

NOTICE OF APPEAL DEF/RESPONDENTS #2

B

*** This appeal is taken pursuant to
28 USC §1257(3) and §1257(2) and USCA RULE 56
SUMMARY JUDGMENT.

*** This appeal is taken pursuant to the
Constitution of the United States Amendment 14,
and the entire Constitution as per circumstances
and facts and evidence applicable. Not limited
to Title 8, Title 18, Title 28, Title 42,
ARTICLE III ET AL.

*** This appeal taken pursuant to Judiciary
Act of 1789 Section 25.

*** This appeal taken pursuant to judiciary
evading Federal Questions and who could not
reach a determination without ruling on the
Federal Question.

*** This appeal to the United States Sup-
reme Court pursuant to denial of access to
courts contrary to law. Denied a trial. State
appeal did not correct.

"It is essential criterion of appellate
jurisdiction that it revises and
corrects proceeding in cause already

NOTICE OF APPEAL DEF/RESPONDENTS #2

instituted, and does not create
that cause." 28 USCS §1257 Note 1:

* * * This appeal pursuant to denial of access
to courts via summary judgment contrary to law,
affirmed on appeal.

* * * This appeal taken pursuant to Constitut-
ion right to a trial fully and fairly heard in
a meaningful manner under the facts, rules,
law, evidence and circumstances of the case
at bar.

* * * This appeal taken pursuant to determin-
ation of "STATE BAR ACT" and "STATE ACTION"
and attorneys "UNDER COLOR OF LAW." RCW 2.48:

* * * This appeal taken pursuant to seeking
the supervision of the United States Supreme
Court invoking their jurisdiction in this
appeal to Washington State Court of Appeals
Division I and the Washington State Supreme
Court, in defense of Beatrice Koker's rights.
The State Appellate Structure (Court of
Appeals and Supreme Court) have so departed

from the accepted and usual course of judicial proceedings and have sanctioned such a departure by a lower court as to call for an exercise of the supervision and justice from the highest court in the land. The courts of the State of Washington have deprived me of rights and deprived me of redress and remedy to the damage of Beatrice Koker, citizen and person. The result has left me barren with no life, liberty nor pursuit of happiness.

*** Below is a newspaper article from the Seattle Post Intelligencer January 26, 1983 regarding the overcrowded courts. Appealing to the Supreme Court to determine "CHECKS AND BALANCES" of state courts, subsidizing injustice, and judgment. I ask investigation of this to determine if overcrowded court calendars and overworked judges effects judgment of the courts in "denials" of rights and judgments contrary to law.

(Copy-typing newspaper article
herein to follow)

NOTICE OF APPEAL DEF/RESPONDENTS #2

B

STATE COURTS
BEING FLOODED,
A JUSTICE SAYS

OLYMPIA (AP) -- "Washington lawmakers have been warned that state courts are being strangled by paperwork and too many lawsuits and that quality of judges may be sliding because of poor pay.

"We're just inundated" state Supreme Court Justice Robert Brachtenbach told the Senate Judiciary Committee yesterday. "If the appeals courts of our state didn't take another case after tomorrow, it would take three years to catch up, even though productivity is up 40 percent."

"At the superior court level, over 158,000 new suits were filed last year, and municipal, district and appeals courts also are jammed with cases, he said."

Two Years For Appeal

It can take two years to go through the appeals process, he said, adding, "That's an intolerable period of time."

A new study shows that landlord-tenant disputes and domestic squabbles, not damage suits, are taking the bulk of judges' time, Brachtenbach said.

"A true story: A judge told me he spent two hours hearing arguments on who would get custody of the dog (in a divorce case,") he said.

Legislators may have to find non-court ways of settling time-consuming

landlord-tenant disagreements and domestic cases, he said.

"The courts already are diverting some cases to court commissioners, pre-settlement conferences and "everything we can think of" to ease the crunch, but lawmakers may want to order more arbitration or some other answer, he said.

"We need to stop this paperwork jungle," Brachtenbach said.

"Court case levels predicted for the year 2000 already have been passed," added Appeals Judge James Andersen.

Supreme Court Chief Justice William Williams argued for a fatter budget for his court, saying new law clerks and other personnel are needed to cope with the avalanche of complicated suits, "Such as WPPSS, asbestos cases and death penalty appeals."

The panel also heard a strong recommendation for jacking up judges' pay.

Chairman Phil Talmadge, D-Seattle and others are pushing a bill to boost the pay for superior court judges from the current \$44,700 to \$60,000. Pay for an appeals judge would go from \$48,000 to \$63,000, and supreme court justices' pay would go from \$51,000 to \$66,000."

JURISDICTION: On appeal to the United States Supreme Court, petitioners Kokers ask that

jurisdiction of this appeal is postponed until after review of the merits. The record speaks for jurisdiction.

This appeal is made in good faith by the petitioners Beatrice E. Koker and Erich Koker. This appeal is not made in anger nor animosity nor vindictiveness, nor maliciously. This appeal is made in grief.

Should the jurisdiction be granted, the petitioners ask the United States Supreme Court to reverse the entire case to trial by reversing the granted summary judgment affirmed on appeal in Cause II III IV to Defendants #2. In the alternative to trial, settlement out of court or damages awarded for injuries, deprivations, et al, to be awarded by the direction of the United States Supreme Court. The concealment of this case encompasses deceit and lying to judges and jury and involving misrepresentation and suppression of material facts to injuries. The Washington

State Courts judgments order and appeal shall
bury this case forever.

TO BURY THIS CASE IS TO INVITE
RESURRECTION.

RESPECTFULLY SUBMITTED,

/s/
Beatrice E. Koker, Pro Se

/s/
Erich Koker

HAND DELIVERED TO: (SERVICE)

Washington State Supreme Court
Olympia, Washington 98504

Court of Appeals Division I
One Union Square
600 University Street
Seattle, Washington 98101

RESPONDENTS #2

ATTORNEY OF RECORD
William A. Helsell, Attorney
Post Office Box 21846
(Washington Building 15th Floor)
HELSELL, FETTERMAN, MARTIN, TODD & HOKANSON
Seattle, Washington 98111

WILLIAM C. GOODLOE
Judge of the Superior Court
Seattle 98104

February 20, 1980

Mrs. Beatrice E. Koker
939 N. 105th Street
Seattle, Washington 98133

Mr. William A. Helsell
Attorney at Law
1500 Washington Building
P. O. Box 21846
Seattle, Washington 98111

Re: Koker vs. Betts and LeMaster
King County Cause No. 864509

Dear Mrs. Koker and Mr. Helsell:

This is to inform you that having heard the arguments, having read the briefs and the citations contained therein, the defendant LeMaster's motion for Summary Judgment is granted.

Yours truly,

/s/
William C. Goodloe

WCG: ec

SEE: CP FILE #81 p 142;

LETTER FROM SUPERIOR COURT JUDGE GRANTING
SUMMARY JUDGMENT CAUSE II III IV

B-1

WILLIAM C. GOODLOE
Judge of the Superior Court
Seattle, 98104

May 6, 1980

Mrs. Beatrice E. Koker
939 North 105th Street
Seattle, WA. 98133

Re: Koker v Betts and LeMaster, et al
King County Cause #864509

Dear Mrs. Koker:

Having taken under advisement your motion to reconsider my order awarding the defendant, LeMaster, a summary judgment dismissal, I have concluded after studying the briefs and the file to adhere to my ruling on that point.

Also, this is to inform you that the Presiding department has reassigned me to the Motion Calendar for the month of May and in view of this action on their part, it will be necessary to inform you that the hearing that was previously set for 9:30 a.m. on May 12, will now be heard at 1:30 p.m. on that date.

cc: Mr. William
Helsell File (2)

Very truly yours,
(no signature)

CP FILE #124 p 34:

William C. Goodloe

LETTER FROM SUPERIOR COURT JUDGE DENYING
MOTION FOR RECONSIDERATION

B-2

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

ERICH KOKER and BEATRICE
E. KOKER, husband and wife,

Plaintiffs,

vs.

FREDERICK V. BETTS, et ux,
et al.

Defendants #1

KENNETH L. LeMASTER, et ux,
et al.,

Defendants #2

No. 864 509

SUMMARY

JUDGMENT

OF DISMISSAL

THIS MATTER having come on for hearing before the undersigned judge of the above entitled court upon the motion of the defendants Kenneth L. LeMaster, Safeco Insurance Company of America, General Insurance Company of America and First National Insurance Company of America for summary judgment of dismissal, defendants appearing through their attorney, William A. Helsell, and plaintiffs appearing pro se through Beatrice E. Koker, and the court having considered the following affidavits filed in support of and in opposition to said motion for summary judgment and below described

SUMMARY JUDGMENT OF DISMISSAL

DEF #2

B-3

memoranda of authority submitted by all parties:

1. Affidavit of Kenneth L. LeMaster.
2. Memorandum in Support of Motion for Summary Judgment by Defendants #2.
3. Plaintiffs Memorandum and Memorandum of Law in Opposition to Defendants #2 Motion for Summary Judgment.
4. Affidavit of Plaintiff Beatrice Koker in Opposition to Defendants #2 Motion for Summary Judgment.
5. Affidavit of Plaintiff Controverting Affidavit of Kenneth L. LeMaster, Def #2.
6. Plaintiffs' Answer: To the "Summary Judgment Hearing Case" Presented by Def #2.
7. Supplementary Page To: Plaintiffs Answer to "hearing Case" in Opposition Re: Evidence of Agreement For Conspiracy and Conclusion.

8. Duty Report: Outcome of "Hearing Case"
at Defendants #1 Summary Judgment Hearing
January 31, 1980. AND OTHER

and the court having listened to oral argument presented by Beatrice E. Koker for plaintiffs and William A. Helsell for the defendants above named, and the court having determined that there is no just reason for delay and that the entry of judgment of dismissal of the plaintiffs' claim against the above defendants should be expressly directed, now therefore,

IT IS HEREBY ORDERED that the motion of defendants Kenneth L. LeMaster, Safeco Insurance Company of America, General Insurance Company of America and First National Insurance Company of America for summary judgment of dismissal be and it is hereby granted.

IT IS FURTHER ORDERED that plaintiffs' complaint and all causes of action therein contained directed at Kenneth L. LeMaster and

SUMMARY JUDGMENT OF DISMISSAL DEF #2

B-4

and his wife, Safeco Insurance Company of America, General Insurance Company of America, and First National Insurance Company of America be and it is hereby dismissed with prejudice and with costs taxed in favor of those defendants.

DONE IN OPEN COURT this 15 day of
May
March, 1980.

/s/
Wm. C. Goodloe, JUDGE

Presented by:

/s/
William A. Helsell
Of Attorneys for Defendants
LeMaster and wife, Safeco
Insurance Company of America,
General Insurance Company Of
America, and First National
Insurance Company of America

CP FILE # 133 p 30:

SUMMARY JUDGMENT OF DISMISSAL DEF #2

B-4(a)

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

ERICH KOKER and BEATRICE)	
E. KOKER, husband and wife,	)	NO. 864 509
)	
Plaintiffs,)	
	)	ORDER
vs.)	
	)	DENYING
FREDERICK V. BETTS, et ux,)	
et al,	)	PLAINTIFFS'
)	
Defendants #1)	
	)	MOTION FOR
KENNETH L. LeMASTER, et ux,)	
et al.,	)	RECONSIDERATION
)	
Defendants #2)	

THIS MATTER having come on for hearing before the undersigned judge of the above entitled court upon the motion of the plaintiffs for reconsideration of the decision of this court reflected by its letter of February 20, 1980, defendants Kenneth L. LeMaster, Safeco Insurance Company of America, General Insurance Company of America, and First National Insurance Company of America appearing through their attorney, William A. Helsell, and plaintiffs appearing pro se through Beatrice E. Koker, and the court having considered the 34-page motion for reconsideration filed by plaintiffs

ORDER DENYING PLAINTIFFS'
MOTION FOR RECONSIDERATION

DEF #2

B-5

and having listened to oral argument presented by Beatrice E. Koker for plaintiffs and William A. Helsell for the defendants above named, and the court being fully advised in the premises, now, therefore,

IT IS HEREBY ORDERED that the motion for reconsideration be and the same is hereby denied.

DONE IN OPEN COURT this 15 day of
May
March 1980.

/s/
Wm C Goodloe JUDGE

Presented by:

/s/
William A. Helsell
Of Attorneys for Defendants
LeMaster and wife, Safeco Insurance
Company of America, General Insurance
Company of America and First National
Insurance Company of America

CP FILE #132 p 32:

ORDER DENYING PLAINTIFFS
MOTION FOR RECONSIDERATION

DEF #2

B-6

THE COURT OF APPEALS
of the
State Of Washington
Seattle

July 6, 1982

Ms Beatrice E. Koker
939 North 105th Street
Seattle, WA 98133

Hellsell, Fetterman,
Martin, Todd &
Hokanson

Mr. William Hellsell
Attorneys at Law
1500 Washington Bldg
P.O. Box 21846

Counsel: Re: No 8935-8-I Koker v LeMaster
and Betts King County No. 864509

The opinion filed by this court in the above-
referenced case today states in part as
follows: "Affirmed"

In accordance with RAP 14.4(a), claim for costs
by the prevailing party must be supported by a
cost bill filed and served within ten days
after the filing of this opinion, or claim for
costs will be deemed to have been waived.

In the event counsel desires to file a motion
for reconsideration, your attention is directed
to RAP 12.4(b), which states that the motion
for reconsideration must be filed within 20 days
after the decision is filed.

Very truly yours,

/s/
Richard D. Taylor, Clerk

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON

ERICK KOKER and BEATRICE
E. KOKER, husband and wife,

Appellants,

V.

FREDERICK V. BETTS and JANE
DOE BETTS, his wife, and
their marital community, and
SKEEL, McKELVY, HENKE, EVANSON
& BETTS, Law Firm of FREDERICK
V. BETTS,

Defendants,

and

KENNETH L. LeMASTER and JANE
DOE LeMASTER, his wife, and
their marital community, and
SAFECO INSURANCE COMPANY OF
AMERICA, and GENERAL INSURANCE
COMPANY OF AMERICA, and FIRST
NATIONAL INSURANCE COMPANY OF
AMERICA,

Respondents.

NO 8935-8-I

DIVISION ONE

FILED

JULY 6, 1982

PER CURIAM. — Plaintiff Beatrice E. Koker
appeals from a summary judgment dismissing her
complaint against Kenneth LeMaster for 1)
conspiracy, 2) misrepresentation, fraud, deceit,
and 3) outrage.

OPINION COURT OF APPEALS FOR DEF #2:

B-8

FACTS

The facts are well known to the parties and have been set forth in Koker v Betts, Court of Appeals Cause Number 9346-1-I and will not be set forth again in this opinion.

Koker commenced this action against Le Master alleging 1) conspiracy, 2) misrepresentation, fraud and deceit, and 3) outrage. The trial court determined that no material issue of fact existed and granted LeMaster's motion for summary judgment on all claims.

CONSPIRACY

Initially, Koker argues that Frederick Betts, her attorney, and Kenneth L. LeMaster, Sages' attorney, conspired to deprive her of a fair trial in Koker v Sage, Court of Appeals Division I, No. 4916-I, petition for review denied 91 Wn 2d 1014 (1979).

Koker presented many assertions of an alleged agreement between Betts and LeMaster to create a conspiracy; however, after a careful review of such claims we conclude

OPINION COURT OF APPEALS FOR DEF #2:

B-8(a)

that such assertions, even if true, do not constitute conspiracy. This identical argument was considered in Koker v Betts, Court of Appeals Cause Number 9346-1-I and found to be without merit. We see no reason to further consider the matter.

MISREPRESENTATION, FRAUD & DECEIT

Koker argues that the trial court erred in holding as a matter of law that her action for fraud, misrepresentation and deceit against LeMaster is barred by the doctrine of collateral estoppel. We disagree.

The four elements of collateral estoppel are:

- (1) Was the issue decided in a prior adjudication identical with the one presented in the action in question?
- (2) Was there a final judgment on the merits?
- (3) was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?
- (4) Will the application of the doctrine not work an injustice on the party against whom the doctrine is to be applied? (Citations omitted.)

Lucas v Velikanje, 2 Wn App 888, 471 P 2d 103(1970). Here, all four elements are satisfied. The issues of deceit and misrepresentation by Mr. LeMaster were presented in Koker v Sage, supra, appeal and resolved against her. The prior litigation ended in judgment on the merits. The party against whom collateral estoppel is asserted, Koker, was a party in the prior litigation. Finally, application of the doctrine will not work an injustice on her since she has already had her day in court.

In any event, the evidence, even viewed in the light most favorable to Koker fails to raise a genuine issue of material fact as to LeMaster's intent to defraud, deceive, or misrepresent. His conduct at trial has already been found to be within the limits of acceptability. Koker v Sage, supra at 3.

OUTRAGE

Next, Koker argues that LeMaster's conduct during the trial was so outrageous that it caused her severe mental distress. This

B-9(a)

argument is without merit. LeMaster's conduct at trial has already been held acceptable by this court in Koker v Sage, supra and therefore the trial court properly dismissed this claim as a matter of law. Grimsby v Samson, 85 Wn 2d 52, 59, 530 P 2d 291 (1975).

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040, IT IS SO ORDERED

/s/

CHIEF JUDGE

IN THE COURT OF APPEALS OF THE STATE WASHINGTON

ERICK KOKER and BEATRICE)	
E. KOKER, husband and wife,	)	NO. 8935-8-I
)	
Appellants,)	
	)	ORDER
v.)	
	)	DENYING
FREDERICK V. BETTS and JANE)	
DOE BETTS, his wife, and their	)	MOTION FOR
marital community and SKEEL,)	
McKELVY, HENKE, EVANSON & BETTS,	)	RECONSIDER-
Law Firm of FREDERICK V. BETTS,	)	ATION
)	
Defendants,)	
)	
and)	
)	
KENNETH L. LeMASTER and JANE)	
DOE LeMASTER, his wife, and)	
their marital community, and)	
SAFECO INSURANCE COMPANY OF)	
AMERICA, and GENERAL INSURANCE)	
COMPANY OF AMERICA, and FIRST)	
NATIONAL INSURANCE COMPANY OF)	
AMERICA,)	
Respondents.)	

The appellants, Erich Koker and Beatrice E. Koker, having filed their motion for reconsideration herein and a majority of the court having determined that it should be denied; Now, therefore, it is hereby ORDERED that the motion for reconsideration be, and the same hereby is, denied.

/s/

Frank D. James
Acting Chief Judge

COURT OF APPEALS #8935-8-I ORDER DENYING
MOTION FOR RECONSIDERATION

B-11

THE SUPREME COURT
State of Washington
Olympia
98504
November 8, 1982

Ms. Beatrice Koker 939 North 105th Street Seattle, Washington 98133	Helsell, Fetterman, Martin, Todd & Hokanson Mr. William Helsell P.O. Box 21846 Seattle, Washington 98111
Mr. Michael Mines Attorney At Law 40th Fl., Bank of California Center Seattle, Washington 98164	

Counsel:

48900-9 BEK

Re: Supreme Court No. 48990-4- Beatrice
Koker, et ux, v Frederick Betts, et ux

Court of Appeals No. 8935-8-I

The above entitled Petition for Review
was considered by the Court on its November
5, 1982, Petition for Review Calendar.

The Petition was denied by order number
107/126 filed on November 8, 1982.

Very truly yours,

/s/
REGINALD N. SHRIVER
Acting Clerk

PETITION FOR REVIEW DENIED BY SUPREME COURT
STATE OF WASHINGTON

B-12

THE SUPREME COURT
State of Washington

Olympia
98504

December 6, 1982

Ms. Beatrice Koker
939 North 105th Street
Seattle, Washington 98133

Mr. William
Helsell
Attorney at Law
P.O. Box 21846
Seattle, WA
98111

Betts, Patterson & Mines
Mr. Michael Mines
40th Fl., Bank of California
Seattle, Washington 98164

Re: Supreme Court No 48900-9- Koker,
et ux, v Betts, et al

Supreme Court No. 49006-6- Koker,
et ux, v Betts, et al.

Counsel:

Petitioner's "Motion To Rule On Pending
Motions" dated November 23, 1982, filing
various post mandate motions without further
action.

The motion will be set for consideration
before a department of the Court on its
January 7, 1982 motion calendar.

Very truly yours,

/s/
REGINALD N. SHRIVER
Acting Clerk

MOTIONS SUBMITTED BY BEATRICE KOKER TO STATE
SUPREME COURT ARE PRE-MANDATE

SEE: APPENDIX A-17 (a):

B-13

THE SUPREME COURT
State of Washington

Olympia
98504

January 7, 1983

Mr. Erich Koker and Mrs. Beatrice E. Koker
939 North 105th Street
Seattle, WA 98133

Betts, Patterson & Mines
Mr. Frederick Betts
40th Floor, Bank of California
Seattle, WA 98164

Helsell, Fetterman, Martin, Todd & Hokanson
Mr. William A. Helsell
P.O. Box 21846
Seattle, WA 98111

Re: No. 48900-9 - KOKER V BETTS, ET AL
No. 49006-6 - KOKER V BETTS, ET AL
(Court of Appeals NOS. 8935-8-I & 9346-1-I)

Counsel:

After a hearing this day, the following
Notation Order was entered in the above entit-
led action in Volume 14, at page 677 of the
Motion Docket.

MOTION TO MODIFY CLERK'S LETTER
OF DETERMINATION. "DENIED."

/s/ William H. Williams Very truly yours,
Acting Chief Justice

/s/
REGINALD N. SHRIVER
Acting Clerk

NOTE: THIS IS AN EXAMPLE OF EVADING AND
AVOIDING. MY MOTIONS NEVER WERE RULED ON!

B-14

NUMERICAL RECORD - CLERK'S PAPERS

APPEAL #8935-8-I Def/Respondent #2

CP FILE #1 p 425: Complaint

✓ CP FILE #62 p 411: Summary Judgment Motion
By Def/Respondent #2

✓ CP FILE #63 p 408: Affidavit Of Def #2:

✓ CP FILE #64 p 391: Memorandum in Support of
Motion For Summary Judgment - Def #2: NOT IN
AFFIDAVIT FORM;

CP FILE #66 p 390: Plaintiff Note For Motion
Continuance:

CP FILE #67 p 389: Continuance Affidavit

CP FILE #73 p 359: Plaintiff Affidavit In
Opposition To Def #2 Summary Judgment Motion:

CP FILE #73 p 359: Last Page Is Affidavit
Of Dr. William K. Sata Refuting Def #2

Affidavit regarding The Doctor. Untruth #2

CP FILE #1 p 425 Paragraphs 2.22 Through 2.31:

Credibility. Substance. Veracity Issues Raised:

CLERK'S PAPERS

B-15

CP FILE #74 p 216: Plaintiffs Memorandum In
Opposition and Memorandum Of Law to Def #2
Motion For Summary Judgment:

CP FILE #75 p 213: Affidavit Of Beatrice
Koker in Opposition To Def #2. No Answer To
Complaint by Either Defendant.

CP FILE #77 p 154: Plaintiffs Answer to Case
Brought First Time By Def #2 Attorney to Oral
Argument Of Summary Judgment:

CP FILE #78 p 153: Supplementary Page To
Plaintiff's Answer In File #77:

CP FILE #80 p 143: Duty Report. Outcome
Of Case Brought To Summary Judgment:

CP FILE #81 p 142: Honorable Judge Goodloe's
Decision Summary Judgment Granted Cause II
III IV: (Also Appendix B-1: Herein)

CP FILE #82 p 98: Plaintiffs Motion For
Reconsideration - Decision Summary Judgment
Granted Cause II III IV.

CP FILE #84 p 96: Plaintiffs Motion For
Order CR 7(b):

CP FILE #85 p 95: Plaintiffs Motion For
Order To Clarify Record:

CP FILE #89 p 84: Plaintiffs Motion To Strike
Proposed Order Summary Judgment And Objections:

CP FILE #90 p 83: Motion To Strike Order
FOR Summary Judgment:

CP FILE #95 p 63: CR 56 Additional Matters
Submitted By Plaintiff.

CP FILE #96 p 59: PROPOSED REVISED ORDER
REJECTED BY PLAINTIFF Continuing Timely
objection And Continuing Timely Motion To
Strike.

CP FILE #97 p 58: Predicted Prejudice.

CP FILE #103 p 56: ADDITIONAL MATTER CR 56.
"3-Way Factual Issue Of Credibility."

CP FILE #102 p 57: Additional Matter CR 56:

CP FILE #117 p 35: Conspiracy. Trial
Cancelled Prior To Court Even Hearing. Then
9 Days After Cancellation, False Reason To
Court. This is Untruth #4 COMPLAINT
CP FILE #1 p 425: Paragraphs 2.47 Through 2.55:
CP FILE #124 p 34: Reconsideration Denied:
CP FILE #132 p 32: ORDER
CP FILE #142 p 27: Specification Of Issues
To Be Tried By Jury.
CP FILE #143 p 26: Jury Demand:
CP FILE #151 p 21: Honorable Judge Goodloe's
Recusal Letter- Superior Court King County.
Judge Friend Of Defendant #1 - APPENDIX A-
5 and APPENDIX A-6:
CP FILE #153 p 4: Objections by Plaintiff:
CP FILE #155 p 1: ANSWER by Plaintiff To
Judge Goodloe's Recusal Letter.
CP FILE #145 p 25: Note For Trial Docket:

ASSIGNMENTS OF ERROR
APPEAL 8935-8-I

Error 1: "First Ruling" The trial court erred in granting summary judgment to Def #2 contrary to law, and this case and circumstances only for trier of fact. CR 59 (a) (1)(3)(7)(9):

Error 2: "Second Ruling"
The trial court erred in denying plaintiffs' motion for reconsideration and granted summary judgment to def#2 again contrary to law in the territory only for the trier of the fact. CR 59(a) (1)(3)(7)(9): THERE WAS DOUBT.

Error 3: "The Order"
The trial court erred in entering the order for summary judgment May 15, 1980, granting dismissal to Def #2, such action contrary to law, and only for the trier.

Error 4: "Evidentiary Pleadings"

The trial court erred in improperly granting summary judgment when there is no proper nor sufficient showing to contradict allegations of fact and proof, leaving issues unresolved, and no answer ever made to pleadings.

Error 5: "Moot Defenses"

The trial court erred in granting summary judgment contrary to law and rule; when the summary judgment is based on moot defenses and the premise of motion is nothing.

Error 6: "CR 56 And Rule 56 Elements Not Met"

The trial court erred weighing factual issues when Def #2 motion for summary judgment was not in affidavit form as per legal demands of CR 56 and Rule 56 of the Constitution of The United States.

Error 7: "Affidavit Of Kenneth L. LeMaster"

The trial court erred in granting motion for summary judgment when the affidavit is one

part "general denial" and another part issue of credibility, and containing questions of veracity and substance in all.

Error 8: "Light Most Favorable To Non-Moving"

The trial court erred in NOT CONSIDERING every thing in the light most favorable to plaintiff including their own evidence.

Error 9: "Divided They Fall"

The trial court erred in dividing joint-tort-feasors in wrongdoing, and leaving unresolved issues only for the trier, destroying "multiple grounds not separable" - complaint.

Error 10: "A Trial Is Necessary"

The trial court erred in granting summary judgment when there is no indication plaintiff would not prevail at trial, dismissing issues and allegations of conspiracy, material facts, complex questions, intent, doubt, controversy, and other only for the trier of the fact.

The trial court erred in disregarding public

ASSIGNMENTS OF ERROR - APPEAL #8935-8-I

B-20

trust and public policy.

Error 11: "Obstruction Of Justice"

The trial court erred in granting summary judgment contrary to law, thus by court order there is obstruction of justice TWICE.

Error 12: "Denial Of Due Process To Constitutional Trial"

The trial court erred granting summary judgment, denying plaintiff Constitutional trial, which is a trial "fully and fairly heard in a meaningful manner", denial compelling "concealment of concealment."

Error 13: "Untimely Recusal"

The trial court erred in recusing himself AFTER ALL THE PROCEEDINGS were finished when the cause of recusal should have been known prior to any proceedings.

STATEMENT OF THE CASE
EXCERPTS * PLAINTIFFS
OPENING BRIEF

* Brief p 13/1-17: and 24-27:

*** Once upon a long time ago there was a trusting, injured, middle-aged woman client of an attorney. This victim was given a personal injury trial for damages only, defense admitted liability. The jury voted the method of "guilty" or "innocent" as for a criminal case, due to the confusion of the trial. SEE: EXHIBIT 1 - COMPLAINT.

CP FILE #1 p 425:

*** The Court of Appeals find \$145,000. is "within the bounds of sensible thought" for a drop foot injury in RYAN V WESTGARD 12 Wash App 500 (1975). Beatrice Koker received \$4,600. for a drop foot injury, plus other permanent injuries, and the original injuries causing further injuries.

*** The woman-client's attorney abandoned her immediately after trial, June 1976. The

Excerpts - STATEMENT OF THE CASE #8935-8-I

B-21

client was forced to appeal pro se and thereby made discovery of wrongdoing and misdeeds by both the defense attorney and her own attorney in the trial and out of trial.

CHRONOLOGICAL SUMMARY BY PLAINTIFF

CP FILE #48 p 412:

*** The complete CHRONOLOGY OF THE CASE AT BAR is on page 9-10-11 Plaintiff's Civil Appeal Statement dated June 26, 1980.

* Brief p 14/1-27: p 15/1-8:

"First Ruling" The summary judgment hearing was held January 31, 1980. The judge did not give his ruling that day, but informed the parties by mail Feb 20, 1980. The decision of the court granted summary judgment to Defendants #2, Cause II III IV.

"Second Ruling" CR 59 (a)(1)(3)(9)(7)

THERE IS DOUBT. Plaintiff filed motion for reconsideration February 25, 1980. CP FILE #

82 Begin p 98: The hearing for this motion

Excerpts - STATEMENT OF THE CASE #8935-8-I

was held March 6, 1980, at which time the Judge took the case "under advisement." Plaintiff filed "Additional Matters" under Rule 56 to persuade the court summary judgment will be fatal to justice and contrary to law. CP FILE #95 Begin p 83; CP FILE #97 Begin P 58; CP FILE #102 Begin p 56; CP FILE #104 Begin p 55; DOUBT; CP FILE #82 Begin P 98 - Pl Document P 22/25-31;

Honorable Judge William C. Goodloe denied the motion for reconsideration presented by plaintiff and granted a summary judgment of dismissal to Def #2 on Cause II III IV. SEE: CP FILE #133 Begin P 30; May 15, 1980. The Judge had doubt.

"The Order" CONTRARY TO LAW. CR 59(a) (1)(3)(7)(9): Order denying plaintiff's motion for reconsideration, and a summary judgment of dismissal entered May 15, 1980. CP FILE #132 Begin p 32; CP FILE #133 p 30;

Excerpts - STATEMENT OF THE CASE #8935-8-I

Plaintiff Beatrice Koker objected to proposed order and objected to revised proposed order. CP FILE #96 Begin P 59;

I did not approve the order form nor the granting of the summary judgment contrary to law. The order was entered over my objections. In oral hearing there was a motion to strike the summary judgment, and continuing objections written. CP FILE #90 Begin p 83; -
P1 Document p 6 and 7; CP FILE #89 Begin p 84-
P1 Document P 13/9-13-14-15; RP "RECONSIDER
ATION" MARCH 6, 1980, Page 2/16-25; p 9/1-8;
COPY OF ORDER ATTACHED TO CIVIL APPEAL ST.

* Brief p 15/10-26; p 16 and p 17:

"Evidentiary Pleadings"

The evidentiary complaint was filed June 7, 1979. There was no answer from anyone. Plaintiff did not make motion for default as that would have not been in good faith knowing the case at bar is only for the trier of the fact for both sides. This is
Excerpts - STATEMENT OF THE CASE #8935-8-I

explained in the affidavit of Beatrice Koker
CP FILE #75 Beginning P 213;

Even in the summary judgment proceedings,
Defendants #2 did not point out lack of mat-
erial facts! No contradictions of the alle-
gations were made by the moving party. The
issues of material fact were presented by
the plaintiff who did not have the burden to
do so, and the evidentiary complaint was re-
alleged and correlated into the memorandum
in opposition to link the facts and proof.
CP FILE #74 p 216 - P1 Document P 98/2-22;
p 31/8-14; COMPLAINT CP FILE #1 Begin P 425;
CAUSES II III IV found in Complaint Para-
graphs 2.1 Through 4.24;

"Moot Defenses"

** "RES JUDICATA" "MOOT"

Def #2 Motion for summary judgment had
defenses of (1) res judicata (2) liability
of opposing attorney to third parties, (3)
immunity to defamation. SEE: DEF #2
Excerpts - STATEMENT OF THE CASE #8935-8-I

B. 25

Memorandum In Support of Motion For Summary
Judgment. CP FILE #62 Begin P 411 - Def #2
Page 4/1-5: p 12/19-29: p 16/7-11:

** The defense of res judicata was contro-
verted by plaintiff two ways: (1) Res Judi-
cata was not applicable in the case at bar
because Def #2 based this defense on Cause of
Action I, in which Def #2 is not named as a
defendant. (2) Res Judicata could not be
a defense in this case under any circumstance
because the parties, issues and subject matter
are different. The case of 1976 trial was
for personal injuries against another def-
endant. The case at bar is for the wrongful
acts and results of the wrongful acts, of two
attorneys participating together in untruths
and concealment and other wrongdoings. The
Res Judicata defense either way is "moot."
CP FILE #74 Begin p 216 - P1 Document P 5/22-31:
P 13/1-31: P 25/21-31: P 68/1-30:

Excerpts - STATEMENT OF THE CASE #8935-8-I
"Moot Defenses"

B-25 (a)

* * The hearings in lower court were immersed in this moot res judicata opposition, and again and again Beatrice Koker reminds the attorney for Def #2 that he is infiltrating into Cause Of Action I in which his client is not even named. RP "SUMMARY JUDGMENT"
Jan 31, 1980: Page 21/12-19: RP "MOTION FOR RECONSIDERATION" MARCH 6, 1980: Page 5/11-14: Page 4/9-12:

* * Where the parties are different, issues are different, and the subject matter is not the same, "res judicata" is by law impossible.
CP FILE #74 Begin P 216 - P1 Document P 10/1-31: P 47/25-30: P 62/8-16: P 65/14-31: P 67/12-30: p 100/9-31: P 101/1-31:

* * "LIABILITY TO THIRD PARTIES" MOOT

Liability of opposing attorney to third parties is the second moot defense used by Def #2. There are exclusions to that liability escape, and those exclusions are right on point in the case at bar, to the wrong-

Excerpts - STATEMENT OF THE CASE #8935-8-I
"Moot Defenses" "Liability To Third Parties"

B-26

doing of Def #2. Proven wrong and to be found in the COMPLAINT FILE #1 Begin p 425: Cause Of Action II; PARAGRAPHS 2.1 THROUGH 2.58; CP FILE #74 Begin P 216 - Plaintiff Document p 31/22-30; P 32/1-17;

* *

"DEFAMATION"

MOOT

Attorney for Def #2 used Restatement of Torts §586 in his Memorandum as aforementioned, and in summary judgment hearing. The plaintiff reiterated that this defense is moot because no defamation is alleged. Quoting RP "SUMMARY JUDGMENT" JAN 31, 1980: Page 4/9-14: p 17/20-23: Beatrice Koker:

"Mr. Helsell has mentioned privileges and immunities. I did not allege defamation. There is no defense against defamation because there is no charge. And I feel as far as privileges and immunities are concerned for myself, I should have the privilege of justice and the immunity to injustice." "Now Mr. Helsell says he has privileges and immunities. Not to conspiracy, not to collusion, and not to telling lies to a judge."

"CR 56 And Rule 56 Elements Not Met"

* Brief p 18/1-24:

** The motion for summary judgment by Def #2/Respondents was not in affidavit form as commanded by CR 56 and Constitutional Rule 56. Beatrice Koker called attention to this fact, and that no contested issue of fact can be considered, no factual matters can be weighed, and no evidence considered by the court in coming to determination of summary judgment unless the motion is in affidavit form. CP FILE #74 Beginning p 216 - P1 Document P 1(b) Lines 2-15:

** Plaintiff again brought up the subject of no affidavit form for Def #2 Motion for summary judgment, at the risk of being repetitive. CP FILE #95 Begin p 63 - P1 Document P 7/23-31:

** The third time, the subject matter of motion not in affidavit form came in "CR 56 Additional Matters", before the Judge had Excerpts - STATEMENT OF THE CASE #8935-8-1 "CR 56 And Rule 56 Elements Not Met"

signed the order. CP FILE #95 Begin P 63-
P1 Document P 7/23-31;

** The matter of Def #2 no-motion-affidavit was then in open court proceedings. SEE:
RP "SUMMARY JUDGMENT" JAN 31, 1980 P 3/
21-22-23; Judicial notice was asked. Finally in the throes of complete pro se desperation Plaintiff made a motion to strike the summary judgment on the grounds the motion was not in proper form. "RP "RECONSIDERATION" MARCH 6, 1980 p 9/24-25: p 10/1-3;

** At no time did the Def #2 make any attempt to correct.

* Brief page 19 and page 20;
"Affidavit Of Kenneth L. LeMaster"
** "GENERAL DENIAL"

Kenneth L. LeMaster who is Def #2, made a general denial of the allegation of conspiracy and collusion. CP FILE #74 Begin p 216 - P1 Document P 1(b) Lines 16-23;

Excerpts - STATEMENT OF THE CASE #8935-8-I
"CR 56 And Rule 56 Elements Not Met"

B.27(a)

P 38/14-31: p 45/17-31: Mr. LeMaster describes his co-defendant in the conspiracy-collusion allegation, as a "professional acquaintance." The references to proof and inferences dictate otherwise. CP FILE #74 Beginning P 216 - P1 Document P 29/29-31: The Judge in the trial of 1976 noticed the informality between counsel, and made comment on that fact: (Counsel of that trial are now in the case at bar as Def #2 and Def #1) SEE: QUOTE OF THE JUDGE CP FILE #1 Begin P 425 - Paragraph 2.55 Cause of Action II: Judge Horowitz to Mr. LeMaster and Mr. Betts in 1976 trial:

"It looks to me it was very informally handled between counsel, you know each other and so forth."

** "SECOND PORTION OF MR. LeMASTER'S AFFIDAVIT" DR. SATA:

Mr. LeMaster states in the second portion of his affidavit, that plaintiff's doctor refused to testify, and refused to Excerpts - STATEMENT OF THE CASE #8935-8-I "Affidavit Of Kenneth L. LeMaster"

honor a subpoena, and is a hostile witness. Untruth #2 is relevant in that it proves the reason for a mistrial in 1975, and the responsibility belongs to Mr. LeMaster.

Complaint FILE #1 Begin P 425: PARAGRAPH 2.22 Through 2.31:

*** There are two affidavits controverting and refuting and denying Mr. LeMaster's affidavit, which at the same time shows the lack of veracity and lack of substance of Def #2 affidavit.

** Beatrice Koker controverted the affidavit of Mr. LeMaster with proof from the record, and facts from her own knowledge and experience. Dr. Sata, who is accused by Mr. LeMaster of refusing to testify, refusing to honor a subpoena, and accused of being a hostile witness, submitted an affidavit refuting and controverting Mr. LeMaster's affidavit. CP FILE #73 Begin

p 359 - P1 Document P 3 Through P 13. (All) Excerpts - STATEMENT OF THE CASE #8935-8-1 "Affidavit Of Kenneth L. LeMaster"

B.28(a)

Dr. Sata's affidavit is attached for the convenience of the court, on the very last page beyond the ~~Ex~~ of plaintiff's affidavit just quoted: CP FILE #73 Begin p 359:
Pl Document P 3 Through 13: Dr. Sata's affidavit filed separately.

** "HOSTILITY"

Mr. LeMaster accuses Dr. Sata of being a hostile witness and this is an untrue accusation as the court will discern after examining the aforementioned Untruth #2 and the affidavit of Beatrice Koker and the affidavit of Dr. William K. Sata. It is apparent especially in CP FILE #73 P 359 -
Pl Document Pages 8 through 12(a): (WHICH IS AFFIDAVIT OF BEATRICE KOKER)

** "ISSUE OF CREDIBILITY" "VERACITY"
"SUBSTANCE OF AFFIDAVIT"

The affidavits of controverting create an issue of credibility. Added to that is doubt of veracity of Def #2 affidavit.

Excerpts - STATEMENT OF THE CASE #8935-8-1
"Affidavit Of Kenneth L. LeMaster"

Plus the substance of the affidavit including general denial and erroneous accusations against Dr. Sata. There is a 3-way credibility issue in CP FILE #104
Begin p 55: (One Page Only) Credibility is only for the trier of the fact.

* Brief p 21/1-27:

"Light Most Favorable To Non-Moving Party"

** The non-moving party is to be viewed in the "light most favorable", and this means to bonafide defenses and motions in good faith. What did the defendant's present to the court in their motion for summary judgment? (a) an improper motion not in affidavit form, (b) Def#2 affidavit of general denial and lack of veracity attack on plaintiff doctor, and lack of substance of affidavit, (c) no evidence that there are no material facts, (d) Def #2 did not meet the required burden of proof, (e) moot defenses. There are

Excerpts - STATEMENT OF THE CASE #8935-8-I
"3-Way Credibility Issue" "Light - - "
B.29(a)

issues of credibility which must never leave the jurisdiction of trier of fact. CP FILE #82 Begin P 98 - P1 Document P 12/21-31;
P 25/11-25; p 2/18-29; p 26/1-9; CP FILE #95 Begin P 63 - P1 Document P 6/21-26;

** Def #2 called off a trial of Beatrice Koker all by himself without benefit of continuance from the court, and with the knowledge of my own attorney who is the co-defendant in this case. CP FILE #117 Begin P 35 - P1 Document P 9/28-32;

** The Def #2 did not meet the elements of the CR 56 and all of their presentation would have to be demonstrated as viewing the plaintiff's presentation in the "light most favorable" as a matter of obvious fact. But the rule states that even if the defendants in any case do follow the rules and do present their case correctly, the court must view the non-moving party in a special light.

Excerpts - STATEMENT OF THE CASE #8935-8-I
"Light Most Favorable To Non-Moving Party"

"Divided They Fall"

The complaint is based upon "Multiple Grounds Not Separable." There are joint-tortfeasors in alleged concert of action and misdeeds. There is togetherness in Cause II III IV. Cause II is misdeeds. Resulting in Cause III - Civil Rights denied, and Cause IV - outrage and anguish.

To remove either Def #2 or Def #1 is to distort the theory of the case, and remove the multiple grounds, and leave a single conspirator not eligible by law. The issues of conspiracy and collusion are not resolved, and dismissing a conspirator is contrary to law, and "divided they fall." CIV. APPEAL p 44/10-14:

I asked in open court that the jury be allowed to decide if anyone should be dismissed so that they would receive the entire facts and evidence of the case to

Excerpts - STATEMENT OF THE CASE #8935-8-1
"Divided They Fall"

B-30 (a)

so determine. SEE: RP "RECONSIDERATION"
MARCH 6, 1980 p 2/23-24-25; Page 3/1-7;
This plaintiff continued naively to plead
for her former attorney that he be treated
fairly and not be left alone to pay the
debt. CP FILE #77 Begin P 154 - P1
Document P 5/25-31: P 6/1-7: P 28/10-16;
RP "SUMMARY JUDGMENT" JAN 31, 1980 Page
4/1-2-3;

There was explanation at a hearing
as to the purpose of the Complaint, to
adjudicate the entire case in one trial,
Four Causes of Action, joint-tortfeasors.
RP "SUMMARY JUDGMENT" JAN 31, 1980 Page 3/
11-20;

Plaintiff predicted prejudice if the
joint-tortfeasors were divided. CP FILE
#97 Page 58; (One Page)

* Brief P 23: 24: 25: 26:

"A Trial Is Necessary"

A trial is necessary as per all assignment of errors and issues and statement of the facts and record herein. Quoting from RP "RECONSIDERATION" MARCH 6, 1980
P 7/5-13: Beatrice Koker To The Judge:

"Mr. Helsell seems to think that it is because I am disgruntled because I didn't get more than \$4,600. Your Honor, when a person is injured and they have to borrow money, they have to mortgage their home to the point of losing their home in order to meet the debts that come with the injuries, then something has to give, and if the people have ruined the trial that could have awarded me those proper, adequate damages, then I have to take recourse against the people who did it."

Could it be crowded court calendars is a persuasive force in dismissing Def #2 contrary to law? There must be no consideration of whom would prevail at trial and the Constitution is unhurried and immune to crowded court calendars. CP FILE #75

Excerpts - STATEMENT OF THE CASE #8935-8-I
"A Trial Is Necessary"

B-32

Begin P 213 - Pl Document P 2/1-22:

RP "SUMMARY JUDGMENT" JAN 31, 1980 Page

4/15-20: Plaintiff pleaded for a trial on the merits and is rebuffed by granting of summary judgment not warranted by law.

All plaintiff's opposition backed up by law was to no avail. CP FILE #74 Begin P 216 - Pl Document P 71/1-31:

Even the slightest issue of fact and dispute and doubt is by law a necessary trial. This plaintiff proved her facts, and proved there are material facts, and issues of credibility, and doubt, controversy, and submitted an evidentiary complaint to back up the allegations. The nature of the case is repugnant. The issues are monumental and complex. The trial is imperatively necessary and speaks for itself from the record. Examples To Follow:

"CONSPIRACY AND COLLUSION: AGREEMENT:

The law is specific that "conspiracy"
Excerpts - STATEMENT OF THE CASE #8935-8-I
"A Trial Is Necessary"

B.32 (a)

is for the trier of the fact" and may not be disposed of on summary judgment. CP FILE #74 Begin P 216 - P1 Document P 26/1-4: P 37/1-18: P 50/12-30: Fact and law prove "implied agreement." CP FILE #74 Begin P 216 - P1 Document P 40/1-30: EXHIBIT 2-3-4 COMPLAINT CP FILE #1 Begin P 425:

Exhibit 2-3-4 (supra) of the Complaint are relevant to the conspiracy and collusion allegations. Attorney of record for Def #2 at oral argument attempted to cloud the issues by referring to the contents of these affidavits as just "chaffing remarks" in the corridor, and attorneys "kidding each other in the halls." SEE: RP "SUMMARY JUDGMENT" Jan 31, 1980 Page 13/21-25: P 14/1-10:

The six elements of conspiracy have been met by plaintiff. CP FILE #77 Begin P 154 - P1 Document P 32/1-30: P 33/1-27:
Then "Agreement" proven to the court.

Excerpts - STATEMENT OF THE CASE #8935-8-I
"A Trial Is Necessary"

B.33

CP FILE #82 Begin P 98 - P1 Document P 25/
26-32: CP FILE #117 Begin P 35 - P1 Docu-
ment P 9/1-24: Beatrice Koker controverted
Mr. Helsell, defense attorney in oral argu-
ment on subject of "agreement" regarding
conspiracy. RP "SUMMARY JUDGMENT" JAN 31,
1980 Page 15/18-32+ P 16/1-17:

Both attorney defendants in the case
at bar maneuvered calling off a trial by
themselves in May of 1974. The record
proves that 9 days after calling off the
trial themselves independent of jurisdic-
tion of any court, one attorney obtained a
continuance "after the fact" on a false
premise of conflict of trial dates. A
motion is deliberately set just prior to
the trial, and both attorneys in that liti-
gation are involved. An attorney is
untruthful to a judge, and the trial is
already a cancelled appointment via the
attorneys, when condescending to ask for

Excerpts - STATEMENT OF THE CASE #8935-8-I
"A Trial Is Necessary"

B-33(a)

a continuance. The entire proof of these facts is in CP FILE #117 Begin P 35 - P1 Document P 5-6-7: PLUS EXHIBITS 5(a)(b)(c)(d)(e): In addition Cause Of Action II shows the purpose of delay on the record. CP FILE #1 Begin P 425: Paragraph 2.47 Through Paragraph 2.58: A TRIAL IS NECESSARY.

MATERIAL FACTS:

Pleadings and affidavits and evidence from the record raised questions of fact and are not resolved. Cause I II III IV was realleged to bring the specific examples and proof into the Plaintiffs Memorandum in opposition to the Motion for summary judgment. CP FILE #74 Begin P 216 - P1 Document Page 98/1-21: Deceit and fraud of the allegations are material facts unresolved. CP FILE #74 Begin P 216 - P1 Document P 32/18-31: The Nine (9) elements of fraud and how they apply to the case at bar is pre-

Excerpts - STATEMENT OF THE CASE #8935-8-I
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sented to the lower court. CP FILE #74
Begin P 216 - Pl Document Pages 51-52-53-
54-55-56(a*(57)(58) TO LINE 21;

Material facts are for the trier of the fact and not to be determined on summary judgment. However, the Def #2 did not say there are no material facts, they did not mention material facts either pro or con.
CP FILE #82 p 98 - Pl Document P 2/1-18;

COMPLEX QUESTIONS:

Honorable Presiding Judge Lloyd Bever in 1979, declared this case complex and definitely for preassignment. CP FILE #95 Begin P 63 - Pl Document P 2/1-14: A precedent case is always complex. CP FILE #95 Begin P 63 - Pl Document P 2/16-19: Complexity is for the trier of the fact, making this case imperative for trial.

INTENT:

There is only one way to reconstruct intent of the parties and that is with
Excerpts - STATEMENT OF THE CASE #8935-8-I
"A Trial Is Necessary"

witnesses and cross-examination and a trial. Summary judgment, by law, cannot determine intent, nor inference of intent. In Plaintiffs memorandum in opposition to Def #2 clearly questions intent: "WHY" "WHY" "WHY" is a question that is repeatedly asked.

CP FILE #74 Begin P 216 - Pl Document P 68/13-23: Only a trial can determine the intent of my own attorney aiding and abetting the defense attorney in the trial of 1976 and is herein relevant to Def #2: CP FILE #74 P 216 - Pl Document P 102/10-16; EXHIBITS 2-3-4
The Affidavits of the Complaint CP FILE #1
Begin P 425: INTENT IS FOR TRIER OF FACT.

CONTROVERSY: PUBLIC TRUST:

The Trier of the fact is there to determine controversy. The issues of the numerical plurality of wrongs committed by Def #2 are numerous. CP FILE #82 Begin P 98 - Pl Document p 12/21-31: p 6/21-26: p 24/2-32: CP FILE #117 Begin P 35 - Pl Document P 9/28-32: PUBLIC TRUST SPEAKS FOR ITSELF.

Excerpts - STATEMENT OF THE CASE #8935-8-I
"A Trial Is Necessary"

* Brief Page 27: Page 28/19-26:

"Obstruction Of Justice"

United States Supreme Court Justice Felix Frankfurter says an attorney actively engaged in the conduct of the trial is not merely another citizen. He is an intimate and trusted and essential part of the machinery of justice, an "officer of the court" and in the most compelling sense. The citizen is to be protected by attorneys. CP FILE #74
Begin P 216 - P1 Document P 36(a) Lines 1-23:

The FIRST OBSTRUCTION OF JUSTICE occurred when the plaintiff attorney AND the defense attorney (Def #2) did not perform their duty by law in the trial of 1976, and caused obstruction of justice, committing misdeeds together in untruths and deceit and concealment. CP FILE #74 Begin P 216 - P1 Document P 32/9-17:

The SECOND OBSTRUCTION OF JUSTICE is to grant summary judgment to Def #2 and dismiss-

ing Cause II III IV and all of the misdeeds
deceit and untruths and concealment and doing
so contrary to law. The Court Order has
sealed the door to redress and remedy.

CP FILE #133 Begin P 30. CP FILE #132 Begin
P 32:

The very officers of the court, the
attorneys, sworn on oath to protect the public,
obstructed justice together in Cause II,
which resulted in Cause III and IV. CP FILE
#74 Begin P 216 - P1 Document P 31/1-4: CIVIL
APPEAL STATEMENT Page 41/26-32:

The jury is also the public and may not
take kindly to the evidence presented by
plaintiff. I will prevail at trial. CP FILE
#74 Begin P 216 - P1 Document 56(a) 13-31:

There is alleged corruption in the trial
of 1976 against the defendants. Complaint
(supra) Para 3.7-3.9: The result of obstruct-
ion of justice in Cause II is outrage & anguish.

Excerpts - STATEMENT OF THE CASE #8935-8-I
"Obstruction Of Justice"

B. 35 (b)

* Brief Pages 29-30-31-32:

"Denial Due Process To Constitutional Trial"

The Constitutional trial referred to herein, is a trial that is "fully and fairly heard in a meaningful manner," under the 14th Amendment of the United States.

A summary judgment was granted to the Defendant #2 moving party, removing Cause II III IV, the entire case against them, a Constitutional trial was demolished with a ruling of the court. The jury will not be informed of the misdeeds, concealment, deceit of either defendant because the ruling left a lone conspirator, ineligible. Plaintiff begged the court to preserve her due process right to a trial, by denying the summary judgment. 6P FILE #82 Begin P 98 - P1 Document P 14/22-29; P 16/2-30; P 21/2-7; CIVIL APPEAL Page 29/4-12;

DUE PROCESS IN ORAL HEARING. RP "RE-CONSIDERATION" MARCH 6, 1980: p 2/15-22;

Excerpts - STATEMENT OF THE CASE #8935-8-I
"Denial Of Due Process To Constitutional Trial"

Quoting Beatrice Koker:

"I feel in this situation that in the matter of due process of law where I am to get a trial, and if this summary judgment is granted to defendants #2, I will have lost the right to my trial. If it is denied to defendants #2, they will have lost nothing. They will be able to have their day in court. They will be able to have the issues decided by the trier of the fact, and everybody will be treated fairly."

Will a trial be fully and fairly heard in a meaningful manner with a defendant, facts, issues, evidence of misdeeds dismissed thus concealed, by a court order?

CONCEALMENT OF CONCEALMENT:

The attorney of record for the moving party, refers to wrongdoing of his client, Mr. LeMaster, as only a "vigorous defense."

CP FILE #74 Begin P 216 - P1 Document P 47/

1-30:

A theory of the case at bar is conceal-

Excerpts - STATEMENT OF THE CASE #8935-8-I
"Denial Due Process To Constitutional Trial"

B.36(a)

ment, complete with evidence from the record to support the allegations. Def #2 was the defense attorney in trial for personal injuries 1976. He executed untruths with the knowledge and involvement of my own counsel, and concealment of misdeeds by both.

By granting the summary judgment to Def #2, this denies Beatrice Koker a Constitutional trial on her proven allegations, and results in concealment of misdeeds for all posterity. The order of the court means "concealment now of concealment then." The plaintiff is left devoid of her Constitutional right to a trial fully and fairly heard in a meaningful manner. The jury has a right to all the evidence proven from the record.

CP FILE #82 p 98 - P1 Document P 16/10-30:

CIVIL APPEAL STATEMENT PAGE 24/22-32:

THE RESULT OF WRONGDOINGS:

To be denied a Constitutional trial is to be denied a Constitutional right to re-

Excerpts - STATEMENT OF THE CASE #8935-8-I
"Denial Due Process To Constitutional Trial"

dress and remedy. The "property" in the form of my person is left a cripple for life and by this ruling of the court, permanently deprived of redress and remedy. Those who committed the wrong are given the advantage. The public trust is betrayed when wrongdoers profit from their wrong. CP FILE #95 Begin P 63 - P1 Document P 15/8-23:
CP FILE #82 Begin P 98 - P1 Document P 13/1-31:

Deceit and concealment of deceit and untruth have an aftermath and repercussions if discovered. The key to the outrage and anguish in this case, is the "discovery." Misdeeds of furtive nature and unwanted discovery, are meant to stay unknown by other than those who committed the acts. CAUSE OF ACTION III PARAGRAPH 3.1 Through PARAGRAPH 3.9 AND CAUSE OF ACTION IV PARAGRAPH 4.1 Through Paragraph 4.24 both to be found in Complaint CP FILE #1 Begin P 425: these two

Excerpts - STATEMENT OF THE CASE #8935-8-I
"Denial Due Process To Constitutional Trial"

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actions are the result of misdeeds and deeds and acts against the oath of an attorney and the CPR and public policy, and fidelity to the court and the law of the land. The repercussions and the aftermath become a minute to minute endurance. CP FILE #74 P 216 - Pl Document P 58/22-30: ALL OF PAGES 59 and 60:

Denial of a Constitutional trial is a denial for redress and remedy for the result of wrongdoing. RP "RECONSIDERATION" PAGE 7/23-24-25: The permanent injuries are adversely affected even to the present day with litigation. A thumbnail sketch of the circumstances present is profit of a wrong for the wrongdoers, and PUNISHMENT FOR THE VICTIM.

What would public trust discern from proof in the record of attorneys lying to judges and a jury? Deceit in a courtroom in concert?

Excerpts - STATEMENT OF THE CASE #8935-8-I
"Denial Due Process To Constitutional Trial"

* Brief Page 32:

"Untimely Recusal"

Honorable Judge William C. Goodloe recused himself from the case at bar. His reason being a long-standing friendship of 30 years with one attorney defendant.

CP FILE #151 p 21: The recusal is an irregularity under CR 59(a)(1):

Judge Goodloe says he had an "uneasy feeling from the very beginning" of the case regarding his friendship with a defendant. He explained he did not want a question of bias or prejudice in a trial, therefore recused himself. A point in fact is summary judgment proceeding is of equal importance to a trial. The determination of IF there will be a trial is a decision entirely for a judge, whereas, in a trial there will be a jury to determine. The letter of recusal is answered by Beatrice Koker. CP FILE #155
Begin p 1: (All) Objections to the

Excerpts - STATEMENT OF THE CASE #8935-8-I
"Untimely Recusal"

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"untimely recusal", because recusal occurred AFTER all the summary judgment proceedings had terminated for both defendants. CP FILE #153 - Begin P 4 (All):

Beatrice Koker has made public record her refusal to accept \$4,600. damage award from a trial permeated with concealment and deceit and untruth. The same refusal to participate, applies to presentation of a silent "concealment of concealment" by court order granting summary judgment to defendants #2. I will not be forced by court ruling and order contrary to law to withhold evidence from the jury about misdeeds and wrongdoing and the theory and essence of my case against Def #2. That would make me a party to deceit. Integrity is the stronghold of honesty. CP FILE #82 Begin P 98 - P1 Document P 30 PARAGRAPH 4 and 5: CIVIL APPEAL STATEMENT PAGE 12/1-8: 13/15-20: 15/1-9: 46/14-30:

Excerpts - STATEMENT OF THE CASE #8935-8-I
"Untimely Recusal"

WHERE AND HOW
FEDERAL QUESTION RAISED
(From Record) DEF-TWO

CP FILE #82 p 98: Petitioners p 15/1:
Petitioner's p 14/22-29: "The Constitution of the United States and the Constitution of the State of Washington jealously guard and protect the right of a fair trial to every citizen. The granting of summary judgment to the Def #2 is denying me due process of law and denying me the right to a trial. Obstruction of justice will be a fact, if this summary judgment decision is allowed to remain. I respectfully ask reconsideration herein, and respectfully ask the summary judgment be denied to allow justice to prevail. The Constitutional issue is now raised."

Comment: Reconsideration granted. Then summary judgment denied II III IV.

p 16/21-23: "I am stating emphatically my Constitutional rights are usurped in granting the summary judgment to annihilate the right to be heard by the trier of the fact."

p 29/12-14: "Can it ever be said that untruths told to a judge and jury in a court of law in a trial is consistent with lawful and honest purposes?"

p 28/14-16: "There cannot be res judicata for a cause of action never pleaded, never tried, never adjudicated, where no trier of the fact has ever touched the allegations or issues determination."

FROM THE RECORD
DEF-TWO ONLY

CP FILE #82 p 98:

Petitioner's p 70/6-8: "How could this of action be res judicata when the Defendants #2 and Defendants #1 have never had their "day in court?"

p 28/11-13: "It follows from the very nature of things that a cause of action which did not exist at the time of the former judgment could not have been the subject matter of the action sustaining that judgment."

p 34/23-28: "Actual fraud" consists of deception, intentionally practiced, to induce another to part with property or to surrender some legal right, and which accomplishes the end designed; on the other hand, "constructive fraud" consists of a breach of legal or equitable duty, which irrespective of moral guilt of the fraud feason, the law declares fraudulent because of its tendency to deceit others, to violate public or private confidence." STEELE V STEELE 295 F Supp 1266 (1969)

p 40/26-27: "Controverting affidavits present a material fact and genuine issues for trier of the fact."

p 50/21-23: "The issue here is a litigant has the Constitutional Right to be in a court of law with issues and facts presented in an honorable manner by both sides in an adversary system!!"

FROM THE RECORD
DEF-TWO ONLY

CF FILE #82 p 98:
Petitioner's p 60/30-31:

"I am now a woman isolated by betrayal."

p 71/23-24: "Only a trial on the merits
of this case at bar will resolve the
issues of fact and prepare for justice
to be done."

p 32/29-31: "The material fact is that
the plaintiffs were deceived not
only by their adversary but by their
own legal counsel allegedly."

ORAL ARGUMENT
SUPERIOR COURT
DEF-TWO ONLY

RP "RECONSIDERATION" MARCH 6, 1980: p 2/
15-22:

"I feel in this situation that in the
matter of due process of law where
I am to get a trial, and if this
summary judgment is granted to
defendants #2, I will have lost
my right to my trial. If it is
denied to defendants #2, (summary
judgment) they will have lost
nothing. They will be able to
have their day in court. They will
be able to have the issues decided
by the trier of the fact, and
everybody will be treated fairly."

p 5/11-13: "My first action is for
personal injuries. (1976 trial)
This action is for the actions of
the attorneys and wrong that they
did."

Federal Question

THE APPEAL
#8935-8-I
DEF-TWO

p 4/1-7: "Appealing denial of due process of law under the 14th Amendment being denied a trial by law. Appeal is under Section 1103, bias of the decision maker; Section 1160(a) reasonable doubt, the validity of judgment, abuse of discretion, obstruction of justice, prejudice and bias, and all other Constitutional guarantees of court proceedings and justice appealed for herein and any and all rules and law and authority that apply."

p 2/18-19: "Appealing dismissal in trial court Cause II that should be law be presented only to the trier of the fact for determination."

I 4/28-30: "The plaintiffs of this appeal must ask protection of due process for proceedings of justice."

p 4/19-23: "Appealing the removal of defendants #2 in Cause II III IV which defeats the "truth, the whole truth and nothing but the truth," in a court of law by eliminating evidence from a trial, evidence proven from the record . . ."

CIVIL APPEAL STATEMENT
APPEAL #8935-8-I
DEF-TWO ONLY

p 50/12-13: "Relief sought in Court of Appeals is definite ruling on the Federal Question."

CIVIL APPEAL STATEMENT
#8935-8-I
DEF-TWO only

p 6/7-13: "The nature of the case is divided in such a way by this summary judgment of dismissal being granted that the issues of Cause II are demolished. The joint-tortfeasors and the multiple grounds not separable were for the trier of the fact.. Thus there is denial of due process of law for this plaintiff under the Constitution for a fully and fairly heard trial in a meaningful manner."

p 7/9-11: "The cause of Action II, the alleged conspiracy and collusion was adjudicated by the judge in dismissal on summary judgment. The due process of law to an open and honest trial is denied this plaintiff by removing evidentiary facts of wrongdoing by two co-defendants to remove Cause II is to "conceal the concealment."

p 13/31-32: "There is issue that the summary judgment proceedings have removed the elements of evidence from the trial that should be only for the trier of the fact. Cause II III IV.

p 18/19-22: and 24-26: "This plaintiff is denied her due process of law of a trial fully and fairly heard in a meaningful manner." "The court has removed a public wrong as well as a civil wrong and severed joint-tortfeasors, co-defendants in their concert of action, when that is question for the jury."

CIVIL APPEAL STATEMENT
APPEAL #8935-8-I
DEF-TWO ONLY

p 21/17-20: "There is issue presented for view and review that to grant a summary judgment to Def #2 and thus remove the truth and evidence denying the plaintiffs an inherent right to a trial fully and fairly heard in a meaningful manner is denial of due process."

p 21/25-32: "There is diversion of justice by dividing an issue and joint-officers-of-the-court tortfeasors when indivisible by law. There is obstruction of justice under the law and there is abuse of discretion by the court in granting of summary judgment to -Defendants #2. There is issue presented for review in being denied a jury trial for the wrongdoings of Def #2 who by being dismissed from this case at bar, is profitting from his wrongs, and this is contrary to the doctrine in law and principle."

p 22/7-9: "It is denial of due process to the appellants for those committing the wrongs to be released to avoid redress and remedy owed under the Constitution."

p 22/14-16: "An issue presented for review is why a defendant would want to escape rather than exercise a Constitutional Right to the due process of a trial."

p 28/26-27: "There is an issue presented for review as to why the defendant would shun a Constitutional right of a trial."

CIVIL APPEAL STATEMENT
APPEAL #8935-8-I
DEF-TWO

p 23/9-14: "There is issue for review in the method of denial of due process. I am not suggesting there was not notice and the open court proceedings in hearings are not the issue. I am stating emphatically that my Constitutional rights are usurped in granting summary judgment of Def #2 thus removing the right to be heard by the trier of the fact according to the law of the land."

p 29/28-31: "There is issue for review because to remove proven facts designated by law to be for the trier of the fact for the jury, is to malign the meaning of truth in a court of law, and remove the basis of our right to a fair trial. Why are the defendants hiding behind a summary judgment?"

p 35/4-9: "There is issue presented for review in denial of equal protection under the law. The Constitutional guaranty of equality of justice applies only to injuries which result from breach of legal duty or an invasion or infringement upon a legal right. Const art 2 §6; art 5, §21: 8 Wests's Pacific Digest 422. Wests Key 321 Constitutional Law."

p 24/28-32: "When the attorneys of the trial choose to commit the wrong, then the legal wheels must choose to present the wrong to the jury so that the appellant is given redress and remedy for their proven acts. Instead, the court of law removed the ugly facts of truth from the record denying due process . ."

Federal Question

CIVIL APPEAL STATEMENT
APPEAL #8935-8-I
DEF-ONE ONLY

p 38/4-7: "Appellant Beatrice Koker is pleading for her rights by law, by Constitution, by authority. Those with the authority to listen and deny summary judgment as is proper by law, have granted a summary judgment contrary to law in every aspect."

p 41/26-32: "There is an issue to review of the obstruction of justice in judicial proceedings when the attorneys are involved in untruths in a court of law. When that fact is proven and brought forward in a cause of action, the court has no right by law to remove the wrongdoer in granting of summary judgment against evidence. There is obstruction of justice to dismiss the obstruction of justice done previously by two attorneys in the trial of 1976."

p 8/3-4: "The nature of the case could become a CLASS ACTION, for the subject matter concerns every citizen in America."

p 19/20-22: "The common law on principles and maxims says law should not tolerate even a small injustice nor the appearance of it. The injustice perpetrated upon this plaintiff is an epidemic."

p 29/22-26: "There is no way to allow wrongful acts to be swept under the "legal rug" because the truth will out, and then the concealment of concealment will add to the public furor already echoing "injustice" . . ."

Federal Question

APPELLANTS REPLY TO THE
ANSWER BY RESPONDENT TO
CIVIL APPEAL STATEMENT
APPEAL 8935-8-I DEF-TWO

p 23/16-23: "There must never be allowed a format to pick and choose procedure and protection for anyone who has committed a drastic wrong. There must be delving beyond the call of duty to see that justice is not only done BUT PERMITTED A CHANCE TO BE DONE."

p 16/17-19: "NO FACTS WERE CONCEDED BY PLAINTIFF, NOR WILL THEY EVER BE CONCEDED AT ANY TIME OR ANY PLACE."

Comment: The Complaint is evidentiary and specific examples proven from the record. Neither defendants answered the complaint? Question: How could anyone concede to proven facts if filing the Complaint? Question: How could one concede in any circumstance to that which is not answered? Def #2 Reply Brief holds that misstatement.

p 15/24-32: "This plaintiff has learned from bitter experience that in being pro se, there is no way to NOT answer every line and word submitted by an adversary. As a result, the opponents know that the entries filed by pro se mount up in pages, and become an annoyance to the court."

"My cause is right, against powerful forces."

p 23/3-6: "There is no Constitutional right like that of facing the truth in a court and having everything open and above board and all the facts before the jury pro and con and let it be done."

Federal Question

OPENING BRIEF (Appellant)
APPEAL #8935-8-I
DEF-TWO

p 27/10-21: "The FIRST OBSTRUCTION OF JUSTICE occurred when the plaintiff attorney AND the defense attorney (Def #2) did not perform their duty by law in the trial of 1976, and caused obstruction of justice, committing misdeeds together in untruths and deceit and concealment."

"The SECOND OBSTRUCTION OF JUSTICE is to grant summary judgment to defendant #2 and dismissing Cause II III IV and all of the misdeeds, deceit and untruths and concealment and doing so contrary to law . . The Court Order has sealed the door to redress and remedy."

p 60/9-11: The FIRST OBSTRUCTION OF JUSTICE occurred prior to and during the trial of 1976, participated in by the plaintiff attorney of that trial and the defense attorney of that trial."

p 60/24-27: The SECOND OBSTRUCTION OF JUSTICE is to allow the first obstruction of justice to remain without redress and remedy, and to bury the facts and evidence, and rule contrary to law and leave the victim facing "concealment of concealment" of the wrong of the attorneys. Justice is lost."

p 11/2-3 and 10: "Due Process to a Constitutional Trial is a trial that is fully and fairly heard in a meaningful manner. "The jury will never hear . . ."

OPENING BRIEF (Appellant)
APPEAL #8935-8-I
DEF-TWO ONLY

p 30/11-17: "By granting the summary judgment to Def #2, this denies Beatrice Koker a Constitutional Trial on her proven allegations and results in concealment of misdeeds for all posterity. The order of the court means "concealment now, of concealment then." The plaintiff is left devoid of her Constitutional right to a trial fully and fairly heard in a meaningful manner."

p 31/19-20: "Denial of a constitutional trial is a denial for redress and remedy for the result of the wrongdoing."

p 32/9-11: "A point in fact is summary judgment proceeding is of equal importance to a trial."

p 48/10-14: "There is a right by law to have a trial untampered from deceit and lies and wrongful deeds. Not only is a trial necessary but a trial fully and fairly heard in a meaningful manner to comply with constitutional promises."

p 52/17: "The reasonableness of a party's acts is a question of fact and a trial is necessary."

Comment: Is there any scienter of reasonableness of the partys' acts in the case at bar? ?

No.

Federal Question

OPENING BRIEF (Appellant)
APPEAL #8935-8-I
DEF-TWO ONLY

p 60/2-7: "The trial of 1976 was corrupted and Def #2 had help from Def #1. "Corruption" is an act of an officer or fiduciary person who wrongfully acts contrary to duty and to rights of others and its effect vitiates the basic integrity and purity negativating that which is vital to the due course of justice. U. S. V RAGEN 86 Fed Supp 382(12): Wests Key 110:"

p 62/3-6: "To bind the forces of justice by tying the hands of plaintiff in presentation of truth and facts and evidence in a trial, is to deny me due process of law to have a Constitutional Trial fully and fairly heard in a meaningful manner."

p 62/26-27: "A Constitutional trial must have all the defendants party to the wrong, and all the evidence and facts and truth."

p 66/2-5: "In excess to the injuries, the attorneys corrupted the trial of 1976. A tort action against them for their legal wrongs, results in summary judgment leaving a harm upon harm to endure."

p 34/4-8: "This case evolved from a trial for personal injuries. The defense and plaintiff attorney in that trial committed misdeeds against the Constitution of the United States and Article III and Amendment 14."

APPELLANTS OPENING BRIEF
APPEAL 8935-8-I
DEF-TWO

p 67/3-10: "The result of legal wrongs resulted in denial of Civil Rights, Procedural Due Process and Procedural Equal Protection under the law. In the Civil Rights Act of 1871 §80 CH 5 p 117: 42 USCA §1985: Quote:

"Section 1985(2) provides that if two or more persons conspire for the purpose of impeding, hindering, obstructing , or defeating the due course of justice with intent to deny any citizen the equal protections of the laws, the party so injured may have the right to recover damages."

"BARNES V DORSEY 480 Fed 2d 1057

(1973) Footnote 37:

p 67/11-18: "8 U.S.C.A. §47 (3) "CIVIL

RIGHTS STATUTE" relating to conspiracies. To recover under Civil Rights Act, it is implicit that alleged deprivation of civil rights must result from breach of duty owed by wrongdoer. CAMPBELL V GLENWOOD

224 F Supp 27: Attorneys have a duty to protect the public trust and honor of the court and the integrity of his legal profession and so says this in 14 CJS 153 CIVIL RIGHTS §92 Breach of Duty Footnote 19."

p 69/14-19: (6): "To give a definite ruling on the federal question of denial of a Constitutional Trial, denial of due process, meaning a trial must be "fully and fairly heard in a meaningful manner, without concealment of facts and evidence, . . . "

OPENING BRIEF (Appellant)
APPEAL #8935-8-I
DEF-TWO Only

p 34/4-8: "The court, in the aura of such total opposition according to the law, granted a summary judgment of dismissal to Def #2 on Cause II III IV contrary to law, and violated a Constitutional promise to a citizen. The Constitutional promise is a trial, "fully and fairly heard in a meaningful manner."

REPLY BRIEF (Appellant)
APPEAL #8935-8-I
DEF-TWO ONLY

p 35/3-5: "Appellants right to a Constitutional trial, fully and fairly heard in a meaningful manner cannot survive a granted summary judgment."

p 35/11-18: and 22-25: "The public issue is prevalent in the case at bar, in that every citizen is a potential litigant. The issue being that every citizen has right to expect justice in a court of law. JUSTICE WILL NOT BE SERVED to grant summary justment and affirmed on appeal contrary to all law and rule and fact and circumstances. Public trust will suffer if wrongdoers whatever their profession, are allowed to "escape" and "avoid" answering for misdeeds against any citizen of that "public."

"The Constitution is but a piece of paper in the archives of Washington D. C., without implementation by the courts and attorneys."

FROM THE RECORD - SUPERIOR COURT
APPEAL #8935-8-I
DEF-TWO

CP FILE #74 p 216:

Petitioners p 27/21-26:

"This legal wrong allegedly accomplished by quasi judicial officers sworn to PROTECT THE "PUBLIC". That is a genuine issue of material fact, and "WHY THEY DID NOT PROTECT" is another material fact."

p 56(a)/14-21:

"The jury represents the "PUBLIC." The jury is the trier of the fact. The alleged fraud and deceit upon a jury who represents the "PUBLIC" the "CITIZEN" the "LITIGANT," whether plaintiff or defendant, are prepared only for truth when it comes to quasi-judicial officers of the court. Fraud and deceit upon the jury and judge is fraud and deceit upon the litigant."

CP 82 p 98:

Petitioners p 4/22-26:

"The allegations of #864509 Cause I * II * III * IV must be resolved to preserve the right to trial to resolve the responsibility of damages, and to segregate wrongful acts for exposure to restitution by the trier of the fact THUS PROTECTING THE PUBLIC from future insurrection foreign to the Oath of an attorney and the Code of Professional Responsibility."

p 8/20-22:

"Deceit is an unsightly blight upon the legal profession and being an attorney is holding a BADGE OF HONOR more than in name only."

Class
FROM THE RECORD -SUPERIOR COURT
APPEAL #8935-8-I
DEF-TWO

CP FILE #32 p 98:

Petitioners p 10/20-23: "To release both Defendants #1 and Defendants #2 from the responsibility of their acts, omissions and legal wrongs, is to condone the deed. To penalize the plaintiff, is to sentence the victim of the wrongs to injustice."

p 11/21-23: "Allegorically speaking, justice is thrice removed and the injustice left my lot is like receiving a chicken bone to subsist until eternity."

p 11/24-30: "The very reason America first came to be, was injustice under the law and disillusioned PEOPLE abdicated from England. The 56 gentlemen who prepared the Constitution of the United States did so with prayer, humility and insight to protect and revere the RIGHTS OF ALL CITIZENS FOR ALL POSTERITY."

p 12/3-7: "Our promised posterity heritage is justice, freedom, liberty, redress and remedy at law, fairness. Even the American medium of exchange carries the promise of "IN GOD WE TRUST." Our patriotic stamps adorn the missives of the American people. Our beloved Flag instills a patriotic reverence for the land of our fathers, home of the brave, land of the free."

p 12/10-12: "The law of the land protects the PEOPLE. The courts belong to the PEOPLE. An attorney is never disbarred to punish the attorney --- but only to PROTECT THE PEOPLE. We the people"

FROM THE RECORD - SUPERIOR COURT
APPEAL #8935-8-I
DEF-TWO

CP FILE #82 p 98:

Petitioners p 12/16-19: "Can the Oath of a defense attorney be any less genuine for PROTECTION OF PEOPLE in a court of law, if the people happen to be adversaries? If the lawyer does not uphold the law of the land, and the dignity of the court - - who will?"

p 25/23-24: "The wrongdoers prevail."
"Abraham Lincoln could be turning over in his grave."

p 30: (Two Paragraphs): "There is public record of my refusal to accept the \$4,600. from the trial of 1976, because my principles will not touch a penny of damages received in the manner of lying to a judge and jury and permeating a trial with deceit and wrong."

"Nothing is better than to accept tainted money obtained through legal wrongs committed in a sanctity of a court of law by the very ones who are ordained to protect such sanctity."

CP FILE #74 p 216:

Petitioners p 58/24-30: "Here we have an entire Evidentiary Complaint of Beatrice Koker with Specific Examples of legal wrongs, and Mr. Helsell implies the conduct of opposing counsel is thought to be "outrageous" when the litigant is portrayed as a vulcher waiting in the weeds to pounce on coffers."

FROM THE RECORD - SUPERIOR COURT
APPEAL #8935-8-I
DEF-TWO

CP FILE #74 p 216:

Petitioners p 58/27-31: "It may be difficult for Mr. Helsell to have understood because someone who has not been crippled could not put themselves into "orthopedic shoes" of someone who is. At one time this plaintiff was whole and complete and swift moving and hard working and full of un, and I would not have understood entirely then."

p 59/2-5: "But I understand now what it is to be crippled. I know what it is like to have an unkind person call to me and say: "Hey you old cripple; you'd be better off dead."

p 59/13-18: "I feel Mr. Helsell did not mean to be unkind. Perhaps he does not understand that when Beatrice Koker was injured, there was an obvious depreciation of desire for material things which was never too prevalent in the first place. There is also a misconception of the value of money. Money does not mean to me what it is supposed to mean."

ORAL ARGUMENT
SUPERIOR COURT-DEF TWO

RP "RECONSIDERATION" MARCH 6, 1980 p 7/6-13:

Your Honor, when a person is injured and they have to go borrow money, they have to mortgage their home to the point of losing their home in order to meet the debts that come with the injuries, then something has to give, and if the people who have ruined the trial that could have

RP (Cont'd)

awarded me those proper, adequate damages, then I have to take recourse against the people who did it."

p 7/17-25: p 8/1-4: "Now, the Appellate Court has put a price on a drop-foot injury of \$145,000. as being a sensible award. I didn't put that on there, but I know that I can't keep my house, I can't keep my yard. For a person who has provided a home loving - - centered her whole life around her home and family, that is a catastrophe, and I feel Mr. LeMaster and Mr. Betts that they owe a debt, that it should be paid, and I am not angry with anybody. I don't feel malice or bitterness or vindictiveness. I just feel that it's time that something is done to help undo what has been done."

The Court: "Do you have anything to add, Mr. Helsell?"

Mr. Helsell: "No, Your Honor."

THE CIVIL APPEAL STATEMENT
DEF-TWO #8935-8-I

p 8/19-22: "The nature of the case relates to why a litigant-client-adversary citizen-public is a chronic victim of the aftermath of dishonesty in a court of law when the doctrine succinctly states the wrongdoer shall not profit by his wrong."

CIVIL APPEAL STATEMENT
APPEAL #8935-8-I
DEF-TWO

p 8/29-32: "The nature of this case can destroy the trust the PUBLIC has in the courts and legal profession. The attorneys are representing the image of integrity and truth and right. Two have allegedly broken their word, their oath and the CPR and a threat to justice."

p 20/16-20: "Those who have done wrong are allowed to leave the burden of their acts upon a CITIZEN-LITIGANT Beatrice Koker whom the attorneys have sworn to protect. That is the lowest form of injustice to encounter and the help for their "escape" comes from the system of justice itself."

p 29/8-12: "The PUBLIC would find the acts of the quasi-judicial officers of the court in trial 1976 outrageous. The public will find it more outrageous to learn such facts are concealed by granting of a summary judgment than in bringing the allegations and defendants properly before the trier of the fact."

p 29/22-28: "There is no way to allow wrongful acts to be swept under the "legal rug" because the truth will out, and then the concealment of concealment will add to the PUBLIC FUROR already echoing "injustice" and dissatisfaction with the legal profession and the courts."

p 45/8-9: "There is an investment in an attorney to PROTECT ALL PEOPLE . . ."

CIVIL APPEAL STATEMENT
APPEAL #8935-8-I
DEF-TWO

p 42/4-8: "There is issue presented for review that a litigant has the inherent right to an honest trial and honest representation and honest opposition in a defense attorney. "Honest" is the legal climate expected of a trial as portrayed to the PUBLIC in their acceptance of the honest image of the legal profession."

p 46/8-12: "SOCIETY in general, as well as the parties to an action is interested in preserving the purity and impartiality of the courts in order to foster respect and confidence of the people in court proceedings."

APPELLANTS OPENING BRIEF
APPEAL #9346-1-I

p 52/26-27: "A trial is necessary on a constitutional basis, and for PUBLIC TRUST to be restored."
"4 WASHINGTON PRACTICE 310 1."

p 53/1-11: "The complexity of this case is due to the nature of the case due to the fact attorneys are the wrongdoers in a court of law, depriving a constitutional right from a CITIZEN, and making a farce out of a trial, in a deceitful and concealing manner unbecoming to their profession. Two members of a very honorable profession fell below the standard of integrity of their Oath and the CPR and the Constitution, both State and Federal and betrayed court and public .."

APPELLANTS OPENING BRIEF
APPEAL #8935-8-I
DEF-TWO

p 57/25-27: "Could PUBLIC TRUST of attorneys survive an investigation of the evidentiary complaint with proof from the record of the wrongdoing by attorneys whom CITIZENS are taught to trust?"

p 58/14-17: "The PUBLIC is interested in litigations when the rights of a CITIZEN is jeopardized by the fact of "there but for the Grace Of God, go I." "A trial is necessary to protect me, AND PUBLIC TRUST."

p 62/11-14: "It is far better the PUBLIC know even attorneys in wrongdoing must make restitution and retribution for their wrongs. The PUBLIC TRUST of truth in a court of law, is affected by one ruling of the court sweeping wrong away under a ruling."

p 62/16-16: "TRUST IS A VERY TENDER EMOTION THAT CANNOT BEAR BETRAYAL."

p 63/3-8: "The CITIZENS consider the Constitution of the United States infallible, and the Constitution of our land an anchor to justice. It is probable most CITIZENS do not have expectation to ever go to trial, but if and when the time comes, the CITIZEN is assured right will prevail."

REPLY BRIEF APPEAL 8935-8-I

p 31/18-20: "Attorneys have a duty to protect the PUBLIC TRUST. . " "Both attorneys breached a duty owed . . "

82 - 1947

Office-Supreme Court, U.S.
FILED

MAY 8 1983

ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

ERICH KOKER and BEATRICE E. KOKER,

APPELLANTS

VS

FREDERICK V. BETTS and JANE DOE BETTS,
his wife, and their marital community,
and SKEEL, McKELVY, HENKE, EVANSON &
BETTS, Law Firm Of Frederick V. Betts,

APPELLEES

AND

KENNETH L. LeMASTER and JANE DOE
LeMASTER, his wife, and their marital
community, and SAFECO INSURANCE COMPANY
OF AMERICA, and GENERAL INSURANCE COMPANY
OF AMERICA, and FIRST NATIONAL INSURANCE
COMPANY OF AMERICA.

APPELLEES

A-P-P-E-N-D-I-X

JURISDICTIONAL STATEMENT

ON APPEAL FROM THE COURT OF APPEALS
DIVISION I AND THE SUPREME COURT OF
THE STATE OF WASHINGTON

Beatrice E. Koker
Erich Koker
Pro Se

939 N. 105th St.
Seattle, WN 98133
(206) 783-6998

APPENDIX "C"

DEF/RESPONDENT #1

Appeal #9346-1-I
State Supreme Court 49006-6

DEF/RESPONDENT #2

Appeal #8935-8-I
State Supreme Court 48900-9

CR 56

State Summary Judgment Rule - C-1 Thru C-20:

Prior Appeal Opinion C-21 Thru C-31:
And Explanation

Much Controversy Over
C-25 Which Is Now
Malpractice Def-One:

Court Of Appeals Ruling C-32 Thru C-42:
And Opinion Manifest Error
And Why:

Opinion For Def #1
Betts - A-8 Thru A-14:

Opinion For Def #2
LeMaster - B-8 Thru B-10:

Cases Believed To Sustain C-43 Thru C-59:
Jurisdiction Of The United
States Supreme Court - Set Forth

Constitutional And Statutory-C-60 Thru C-83
Provisions Involved

I do certify all xeroxing to be true copies.

Beatrice E. Koker

CR 56 SUMMARY JUDGMENT STATE RULE

- - -QUOTING:- - -

A. INTRODUCTORY 1. In General

"Material questions of fact may not be properly resolved by summary judgment." Clarke V. Alstore Realty Corp (1974) 11 Wn App 942, 527 P 2d 698;

2. PURPOSE AND EFFECT OF RULE AND PROCEEDINGS THEREUNDER

"Function of summary judgment is to avoid useless trial, however, trial is not useless, but absolutely necessary, where there is genuine issue as to any material fact." Preston v Duncan (1960) 55 Wn 2d 678, 349 P 2d 605; Bates v Bowles White & Co (1960) 56 Wn 2d 374, 353 P 2d 663; Wheeler v Ronald Sewer Dist (1961) 58 Wn 2d 444, 364 P 2d 780; Reagan v Seattle (1969) 76 Wn 2d 501, 458 P 2d 12;

"Very object of motion for summary judgment is to separate what is formal or pretended in denial or averment from what is genuine and substantial, so that only latter may subject suitor to burden of trial." Preston v Duncan (1960) 55 Wn 2d 678, 349 P 2d 605;

QUOTING

"Summary judgment procedure is not catchpenny contrivance, to take unwary litigants into its toils, and deprive them of trial, it is a liberal measure, liberally designed for arriving at truth, and its purpose is not to cut litigants off from their right to trial by jury if they really have evidence which they will offer at trial, but it is to carefully test this point out, in advance of trial, by inquiring and determining whether such evidence exists." Preston v Duncan (1960) 55 Wn 2d 678, 349 P 2d 605:

"Purpose of summary judgment is to avoid useless trial." Lish v Dickey (1969) 1 Wn App 112, 459 P 2d 810: McGough v Edmonds (1969) 1 Wn App 164, 460 P 2d 302:

"While the procedure for summary judgment exists to prevent useless trials, a trial is not to be considered useless if there exists a genuine issue as to any material fact." Barovic v Cochran Electric Co. (1974) 11 Wn App 563, 524 P 2d 261:

3. NECESSITY OF, AND RIGHT TO, TRIAL

"Though summary judgment is proper and valuable instrument for preventing useless trials it should not be used where real doubt

QUOTING

exists as to decisive factual issues. Bartlett v Northern Pacific R. Co (1968) 74 Wn 2d 881, 447 P 2d 735:

B. APPLICATION FOR SUMMARY JUDGMENT AND SHOWING THEREON

4. IN GENERAL

"Party moving for summary judgment must establish that there is no genuine issue as to any material fact, and that undisputed facts require judgment in his favor." Sanders v Day (1970) 2 Wn App 393, 468 P 2d 452:

5. AFFIDAVITS

"Under provision of subd (e) requiring summary judgment affidavits to be made on personal knowledge, affidavit may present evidentiary facts by means of affiant's reference to sworn or certified statements of another person." Caldwell v Yellow Cab Service, Inc. (1970) 2 Wn App 588, 469 P 2d 218:

"Evidence in a summary judgment affidavit, which pursuant to CR 56(e) must be based upon the affiant's personal knowledge, may be presented by reference to other sworn state-

ments in the record such as depositions and other affidavits."

Mostrom v Pettibon (1980) 25 Wn App 158, 607 P 2d 864:

6. SHOWING IN PLEADINGS

"While the party who moves for summary judgment bears the burden of showing that there is no genuine issue of material fact, once he has so done, the other party may not rely on his pleadings unsupported by evidentiary facts." State v Yard Birds, Inc. (1973) 9 Wn App 514, 513 P 2d 1030: (Emphasis Mine)

"In order to defeat a motion for summary judgment, once it is shown that no genuine issue of material fact exists, the nonmoving party must furnish factual evidence which establishes such a genuine issue, rather than merely asserting that unresolved issues remain." Bates v Grace United Methodist Church (1974) 12 Wn App 111, 529 P 2d 466: (Emphasis Mine)

7. BURDEN OF PROOF

"One who moves for summary judgment has burden of proving that there is no genuine issue of facts, irrespective of whether he or his opponent

would, at trial, have burden of proof on issue concerned." Preston v Duncan (1960) 55 Wn 2d 678, 349 P 2d 605; Reynolds v Kuhl (1961) 58 Wn 2d 313, 362 P 2d 589:

"Burden of proof is on party moving for summary judgment to prove by uncontroverted facts, that no genuine issue as to any material fact exists." Jolly v Fossum (1961) 59 Wn 2d 20, 365 P 2d 780:

"Burden is on party moving for summary judgment to establish absence of genuine issue as to material fact." Reed v Streib (1965) 65 Wn 2d 700, 399 P 2d 338:

"Party moving for summary judgment has burden of showing that there is no genuine issue of fact." Jorgensen v Massart (1963) 61 Wn 2d 491, 378 P 2d 941; Balise v Underwood (1963) 62 Wn 2d 195, 381 P 2d 966; Hudesman v Foley (1968) 73 Wn 2d 880, 441 P 2d 532; Regan v Seattle (1969) 76 Wn 2d 501, 458 P 2d 12; Lish v Dickey (1969) 1 Wn App 112, 459 P 2d 810; Raabe v Coy (1970) 2 Wn App 161, 467 P 2d 326:

7. BURDEN OF PROOF (Cont'd)

"Burden is upon party moving for summary judgment to show that there is no genuine dispute of material fact and this burden cannot be shifted to adversary, irrespective of whether he or his opponent would at trial, have burden of proof on issue concerned."

American Universal Ins Co v Ranson
(1962) 59 Wn 2d 811, 370 P 2d 867:

"Party moving for summary judgment has burden of showing that there is no genuine issue of material fact on each theory of liability advanced by his adversary." McGough v Edmonds
(1969) 1 Wn App 164, 460 P 2d 302:

"Burden is on party moving for summary judgment to demonstrate absence of factual issue, and reasonable inferences from the evidence must be resolved against him."
Caldwell v Yellow Cab Service, Inc
(1970) 2 Wn App 588, 469 P 2d 218:

Please Note: APPENDIX A-37 Through A-40:

F. V. Betts presentation did not meet burden of proof. APPENDIX B-15 Through B-18: Kenneth

L. LeMaster presentation did not meet burden.

Neither presented any evidence. Major portion

both Appendix A and B from plaintiff B. Koker.

Excerpts - CR 56 Wash Ct Rules Annot Rev'd
Summary Judgment

C-6

C. HEARING AND DETERMINATION

9. FUNCTION AND POWER OF COURT

"In ruling on motion for summary judgment, court's function is not to resolve any existing factual issue, but to determine whether such genuine issue exists."

Jolly v Fossum (1961) 59 Wn 2d 20, 365 P 2d 780; Hughes v Chehalis School Dist (1962) 61 Wn 2d 222, 377 P 2d 642;

"In ruling on motion for summary judgment, court must consider all evidence and all reasonable inferences therefrom most favorable to nonmoving party, and if there is genuine issue as to any material fact, summary judgment cannot be granted." Maki v Aluminum Bldg. Products (1968) 72 Wn 2d 23, 436 P 2d 186;

10. CONSIDERATION OF
PLEADINGS, AFFIDAVITS
AND EVIDENCE

"Court cannot resolve genuine issue of credibility, such as is raised by contradicting or impeaching evidence which is not too incredible to be believed by reasonable minds." Balise v Underwood (1963) 62 Wn 2d 195, 381 P 2d 966:

10. (cont'd)

"Trial court is not permitted to weigh evidence in ruling on motion for summary judgment, nor is it entitled to resolve any existing factual issues." Fleming v Smith (1964) 64 Wn 2d 181, 390 P 2d 990:

"In considering motion for summary judgment, court must review material submitted by both parties in light most favorable to nonmovant." Wise (Robert) Plumbing & Heating, Inc. v Alpine Development Co (1967) 72 Wn 2d 172, 432 P 2d 547:

"Credibility of witness should not ordinarily be determined on motion for summary judgment." Hudesman v Foley (1968) 73 Wn 2d 880, 441 P 2d 532:

"While all affidavits submitted in a summary judgment proceeding must conform to the requirements of statutes and, as nearly as possible, reflect that which the affiant would be permitted to testify to in court, affidavits presented by the nonmoving party are generally to be accorded some leniency in meeting these requirements." Morris v McNicol (1974) 83 Wn 2d 491, 519 P 2d 7:

11. ASSERTIONS TAKEN TO BE TRUE

"On motion for summary judgment, facts asserted by nonmoving party and supported by affidavits or other proper evidentiary material must be taken as true." State ex rel. Bond v State (1963) 62 Wn 2d 487, 383 P 2d 288:

"When pleading or affidavit is properly made and is uncontradicted, it may be taken as true for purposes of passing upon motion for summary judgment." Ieland v Frogge (1967) 71 Wn 2d 197, 427 P 2d 724:

12. PRESUMPTIONS AND INFERENCES

"In ruling on motion for summary judgment court must view facts and all reasonable inferences therefrom, in light most favorable to nonmoving party." Gaines v Northern Pacific R. Co (1963) 62 Wn 2d 45, 380 P 2d 863:

"In determining whether there is issue of material fact for purposes of summary judgment, party against whom such judgment is sought is entitled to all favorable inferences that can be deduced from affidavits in the case." Meadows v Grant's Auto Brokers (1967) 71 Wn 2d 874:

12. Presumptions And Inferences
(Cont'd)

"Material evidence and its inferences must be considered most favorably to nonmoving party in determining whether factual dispute exists."

Balise v Underwood (1963) 62 Wn 2d 195, 381 P 2d 966:

"Burden is on party moving for summary judgment to demonstrate absence of genuine issue of material fact, and reasonable inferences from evidence must be resolved against him." Caldwell v Yellow Cab Service, Inc (1970) 2 Wn App 588, 469 P 2d 218:

b. GRANT OR DENIAL OF MOTION

13. IN GENERAL

"Under CR 56, a trial is mandatory when there is a genuine issue as to any material fact. A "material fact" is a fact upon which the outcome of the litigation depends, in a whole or in part." Barber v Bankers Life & Casualty Co (1972) 81 Wn 2d 140, 500 P 2d 88: (Emphasis Mine)

"Material facts, within meaning of this rule, are those on which outcome of litigation depends."
Zedrick v Kosenski (1963) 62 Wn 2d 50, 380 P 2d 870:

14. WHEN SUMMARY JUDGMENT

PROPER OR REQUIRED

"Granting of motion for summary judgment is proper only where moving party is entitled to judgment as matter of law, where it is quite clear what truth is, and no genuine issue remains for trial." Burback v Bucher (1960) 56 Wn 2d 875, 355 P 2d 981;

16. WHEN SUMMARY JUDGMENT

IMPROPER OR NOT REQUIRED

"It is improper to enter summary judgment granting to one party remedy about which both parties are litigating as long as relevant issues of fact have not been decided." Lewis County Sav & Loan Assoc v Black (1962) 60 Wn 2d 362, 374 P 2d 157;

"So long as party who is deemed to have admitted making statement, on his failure to answer request for his admission as to having made statement, has, by pleading or affidavit denied truth of such statement, material issue as to fact contained in statement remains so as to prevent granting of summary judgment." Salvino v Aetna Life Ins Co (1964) 64 Wn 2d 795, 394 P 2d 366:

16. When Summary Judgment
Improper Or Not Required
(Cont'd)

"Summary judgment cannot be granted if there is dispute as to any issue of material fact, or if facts are not in dispute but reasonable minds might differ as to liability."

Mathis v Swanson (1966) 68 Wn 2d 424, 413 P 2d 662:

"Motion for summary judgment must be denied even where evidentiary facts are undisputed if reasonable minds could draw different conclusions therefrom." Fleming v Stoddard Wendle Motor Co (1967) 70 Wn 2d 465, 423 P 2d 926:

"The reasonableness of a party's acts is a question of fact, and if it is a material issue in resolving litigation, the granting of a summary judgment is improper." Morris v McNicol (1974) 83 Wn 2d 491, 519 P 2d 7:

"Affirmance of the granting of summary judgment on grounds other than those relied upon by the trial court is premature in the absence of an opportunity to fully and fairly litigate those other grounds. In such an instance, the case should be remanded rather than affirmed (CR 56 (f))" Bernal v American Honda Motor Co. 87 Wn 2d 406, 553 P 2d 107:

17. PARTICULAR ACTIONS AND ISSUES

"Summary judgment is not warranted where, though evidentiary facts are not in dispute, different inferences may be drawn therefrom as to ultimate facts such as intent, knowledge, good faith, negligence, etc." Preston v Duncan (1960)
55 Wn 2d 678, 349 P 2d 605:

"Where defendant simply established that, unless plaintiff had testimony in addition to her own, she could not make case for jury, court should have denied motion for summary judgment, since moving party failed to sustain burden of proof." Preston v Duncan (1960)
55 Wn 2d 678, 349 P 2d 605:

26. SCOPE OF APPELLATE REVIEW AND DETERMINATION

"In reviewing a trial court's determination regarding a motion for summary judgment, an appellate court assumes the truth of the evidence presented by the nonmoving party and gives such party the benefit of all reasonable inferences from that evidence." Bates v Grace United Methodist Church (1974)
12 Wn App 111, 529 P 2d 466:

DECISIONS CONSTRUING SIMILAR
FEDERAL RULE

A. INTRODUCTORY

1. IN GENERAL

"In absence of express statutory authorization, courts are extremely reluctant to allow proceedings more summary than full court trial at common law." New Hampshire Fire Ins Co v Scanlon (1960) 362 US 404, 4 L Ed 2d 826, 80 S Ct 843:

3. LIMITS, WHEN RULE
INAPPLICABLE

"Rule relating to summary judgments should be cautiously invoked to end that parties, may always be afforded trial where there is bona fide dispute of facts between them."
Associated Press, International News Service v United States (1944) 326 US 1, 89 L Ed 2013, 65 S Ct 1416, reh den 326 US 802, 90 L Ed 489, 66 S Ct 6:

"This rule does not serve as substitute for trial of case, nor require parties to dispose of litigation through use of affidavits."
Smoot v Chicago, R. I. & P. R. CO (1967) Okla) 378 F 2d 879:

Excerpts - CR 56 Wash Ct Rules Annot Rev'd
Summary Judgment Decisions Similar Federal
Rule

C-14

B. APPLICATION AND SHOWING
FOR SUMMARY JUDGMENT

4. In General

"Burden is on party moving for summary judgment to demonstrate clearly that there is no genuine issue of fact, and any doubt as to existence of such issue is resolved against him."

Phoenix Sav & Loan, Inc v Aetna Casualty & Surety Co (1967) (Md)
381 F 2d 245:

5. MOTIONS, AND CONTENTIONS
AND CONCESSIONS THERE-
UNDER

"Movant seeking summary judgment may content that under his theory of the case no substantial issue of fact exists, while under adversary's theory factual questions are in issue." Cram v Sun Ins Office, Ltd (1967) (SC) 375 F 2d 670:

"In moving for summary judgment, defendant admits all facts that have been well pleaded by plaintiff." Gore v Northeast Airlines, Inc (1967) (NY) 373 F 2d 717:

Decisions Similar Federal Rules to CR 56
Summary Judgment Wash Ct Rules Annot Rev'd
Excerpts -

C-15

6. AFFIDAVITS

"Provisions of subd (e) that adverse party "may not rest upon the mere allegations or denials of his pleadings", does not forbid use of affidavit contained in verified pleading to traverse affidavits opposing it." Khan v Garanzini (1969, Mich) 411 F 2d 210:

SEE: (FEDERAL RULES DIGEST THIRD EDITION
CUMULATIVE SUPPLEMENT 56c.31 p 11:

Plaintiff's complaint is properly serving as affidavit in opposition to resist motion for summary judgment.)

8. PLEADINGS

"Sufficiency of allegations of complaint do not determine motion for summary judgment." Lindsey v Leavy (1945 Wash) 149 F 2d 899, cert den 326 US 783, 90 L Ed 474, 66 S Ct 331: Christianson v Gaines (1949, DC) 174 F 2d 534: Surkin v Charteris (1952, Fla) 197 F 2d 77:

Excerpts - Decisions Similar Federal Rules
To CR 56 Summary Judgment Wash Ct Rules
Annot Rev'd

C. GRANT OR DENIAL OF

SUMMARY JUDGMENT

9. IN GENERAL

"Requirements governing summary judgments are to be strictly applied to insure that genuine factual issues will not be determined without benefit of trial." Frey v Frankel (1966, Kan) 361 F 2d 437:

10. COURT'S CONSIDERATION

OF, AND DETERMINATION

ON, MATTERS SHOWN

"Discretion plays no real role in grant of summary judgment."
National Screen Service Corp v Poster Exchange, Inc. (1962, GA)
305 F 2d 647:

"Issue of material fact required by subd (e) to be present to entitle party opposing motion for summary judgment to proceed to trial, is not required to be resolved conclusively in favor of party asserting its existence, rather, all that is required is that sufficient evidence supporting claimed factual dispute be shown to require judge or jury to resolve parties' differing versions of the truth at trial."

(Cont'd)

Excerpts - Decisions Similar Federal Rules
to CR 56 Summary Judgment Wash Ct Rules
Annot Rev'd

C-17

10. Cont'd:

First National Bank v Cities
Service Co (1968) 391 US 253,
20 L Ed 2d 569, 88 S Ct 1575:

"On motion for summary judgment,
court should not attempt to recon-
struct intent of parties in comp-
licated factual situation thereby
denying them opportunity to
present evidence on that issue to
trier of fact." Preston v United
States Trust Co (1968, NY)
394 F 2d 456, cert den 393 US
1019, 21 L Ed 2d 563, 89 S Ct 624:

"Party moving for summary judg-
ment has burden of showing absence
of genuine issue as to any mater-
ial fact, and to that end,
material lodged by a moving party
must be viewed in light most
favorable to opposing party."
Adickes v Kress (S. H.) & Co.
(1970) 398 US 144, 26 L Ed 2d 142,
90 S Ct 1598:

11. WHEN SUMMARY JUDGMENT

PROPER OR REQUIRED

"In order to grant party summary
judgment, that party must be
entitled to relief beyond all
doubt, and without room for
controversy." Williams v Chick
(1967, Mo) 373 F 2d 330:

Excerpts - Decisions Similar Federal Rules
To CR 56 Summary Judgment Wash Ct Rules
Annot Rev'd

13. WHEN SUMMARY JUDGMENT

IMPROPER OR NOT REQUIRED

"Denial of motion for summary judgment is appropriate when legal issues are of particular significance, or particularly complex, or can be intelligently resolved only on fully developed record." Grace (Anthony) & Sons, Inc v United States (1965, Ct Cl) 345 F 2d 808, revd on other grounds 384 US 424, 16 L Ed 2d 662, 86 S Ct 1539:

"While party is not entitled to denial of motion for summary judgment on basis of mere hope that evidence to support his claim will develop at trial, such judgment should be denied where it is highly probable that the evidence will develop at trial." Taylor v Rederi A/S Volo (1967, Pa) 374 F 2d 545:

"If opinion evidence is relevant, case is not one to be determined on motion for summary judgment." Elliott v Massachusetts Mut Life Ins Co (1968) (Ala) 388 F 2d 362:

14. PARTICULAR ISSUES
AND PROCEEDINGS

"Generally, negligence is not susceptible of summary adjudication, but should be resolved by trial in ordinary manner."

Melton v Greyhound Corp (1965, Tex) 354 F 2d 970:

"Credibility of witness is factual issue precluding summary judgment." Cram v Sun Ins Office, Ltd (1967, SC) 375 F 2d 670:

D. APPEAL AND ERROR

18. REVIEW

"In considering motion for summary judgment, appellate court is required to examine record in light most favorable to party opposing motion." Frey v Frankel (1966, Kan) 361 F 2d 437:

19. APPELLATE DECISION AND
SUBSEQUENT PROCEEDINGS

"Appellate court is unwilling to sustain summary judgment where record is unclear on both fact and legal theory forming basis for trial court's ruling."

Frey v Frankel (1966, Kan)
361 F 2d 437:

Excerpts - Decisions Similar Federal Rules
To CR 56 Summary Judgment Wash Ct Rules

PRIOR APPEAL

The record shows designated issues on the prior appeal, inadequate damages and abuse of discretion by the court, and conduct of the defense attorney in 1976 trial vouching for credibility of witnesses, asking promises of the jury, insinuating questions, maligning, et al. This conduct is new issue in case at bar as specific examples of malpractice because my attorney then (Mr. Betts) did not protect his client Beatrice Koker by objections and rebuttal.

The case at bar is new issues, new parties, new subject matter. "A judgment does not bar a second action, based on new facts created by the first action, though both actions arise out of the same subject matter." 28 USCA Note 180 p 319 IV:

The following pages will show the prior appeal decision and opinion, and excerpts, and how it opened the door to tort.

EXCERPTS - PRIOR APPEAL OPINION	COMMENTS
1976 Trial - Permanent Injuries	1978

The following opinion quotations are from the same Court of Appeals that rules \$145,000. is an award "within the bounds of sensible thought for a drop foot injury."

RYAN V WESTGARD 12 Wash App 500 (1975) 530 p 2d 687:

Beatrice Koker was awarded \$4,600. for a proven drop foot injury, plus proven other injuries cervical and aggravation of pre-existing condition. Obviously inadequate. "WHY?" and the discovery and proof and the responsibility and liability and the damages to person and property and the manifest harm is the basis of the case at bar plus other.

Appeal #4916-I 1978
Court Of Appeals
Opinion - Door to Tort

Page 1 and 2: "Erich and Beatrice Koker, husband and wife, appeal from a jury verdict in their favor in the amount of \$4,600 against Noel B. and Winetts

EXCERPTS - PRIOR APPEAL OPINION - 1978
1976 Trial - Permanent Injuries Comments

C-21 (a)

Sage, husband and wife, and Noel B. Sage, Jr., in a personal injury action arising out of a 1971 traffic accident. The Kokers' assignments of error concern the size of the verdict, rulings on evidence, conduct of counsel, jury instruction, jury misconduct and newly discovered evidence."

Resume: The opinion of the court goes on to say the evidence of the 1976 trial was in conflict, that the defense presented evidence to show complaints were nonexistent and much of the treatment not necessary.

Comment: The "conflict" of evidence is the result of a confused trial, malpractice of my own attorney, concert of actions, omissions and legal wrongs with the defense attorney, mental status attacks upon the plaintiff by defense attorney aided and abetted by my own attorney, withholding, suppressing, and

misrepresentation of material facts to the injuries, key questions not asked the treating doctor about the injuries, prejudicial viewing by the jury and discussion within the proceedings about evidence viewed but not presented. Misstatements, casting aspersions upon memory of witness and witnesses, insinuating questions, a doctor offering information that is deferred to direct examination, and ultimately never asked. Four untruths in concert of two attorneys to judges and jury, and one untruth by F. V. Betts alone.

All the proof from the record of these charges will be found in the COMPLAINT.

CP FILE #1 p 697 - Appeal #9346-1-I: AND

CP FILE #1 p 425 - Appeal #8935-8-I: (SAME)

Paragraphs 1.16 Through 1.84: Malpractice

Paragraphs 2.3 Through 2.58: Untruths - Both

Throughout the trial no protection for the client by objections and rebuttal and

EXCERPTS - PRIOR APPEAL OPINION - 1978

1976 Trial - Permanent Injuries Comments

controverting as is the duty of the plaintiff attorney.

Page 2 And 3:

Prior 1978 Appeal: The Appellate Court Says:

"The Koker's next assignment of error concerns a deposition of Dr. Sata which had not been transcribed prior to trial. They contend that it is newly discovered evidence withheld by the defense which contradicts Dr. Sata's medical report and entitles them to a new trial."

Resume: The court says the deposition was taken August 20, 1975 and the trial was June 10, 1976 and that Mr. Betts, the Koker's counsel then was present at and participated in the deposition and "evidently chose not to transcribe it." The court says to be "newly discovered" the evidence must be discovered after trial. The court stated no evidence that the deposition not discovered until trial ended.

EXCERPTS - PRIOR APPEAL OPINION - 1978

1976 Trial - Permanent Injuries Comments

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(Cont'd)
Page 2 and 3:
Comments:

The court viewed the appeal from what the attorney did and did not do. The attorneys knew there was a changed medical report in the deposition of a plaintiff doctor neurologist and both withheld the deposition, the changed medical report, and neither called the doctor to testify.

I was pro se on appeal for a new trial, and writing that it was newly discovered evidence, as it was to me. My attorney's duty became infidelity to the client, citizen, and court. I did not get a new trial even though the discovery was made after trial by myself.

Page 3:
Prior 1978 Appeal:
Conduct Of Defense Counsel: Quoting:

"The Kokers make several assignments of error concerning the conduct of defense counsel. They include: (1)
extraction of promises from jurors

EXCERPTS - PRIOR APPEAL OPINION - 1978
1976 Trial - Permanent Injuries Comments

C.25

during voir dire and requests during final argument that they keep their promises to him:

"I, and my clients take that as a serious solemn promise that is being called in, so to speak, at this time."

(2) the statement during closing argument that counsel thinks a defense expert witness is commendable and extremely thorough; (3) the testimony of this same defense expert witness describing Mrs. Koker as an appealing woman and the closing argument of defense counsel alluding to this testimony; (4) misstatement of testimony and casting aspersions on Mrs. Koker and her witnesses during trial final argument; (5) an objection by defense counsel which improperly implied that one of the Kokers' lay witnesses could not recall events 5 years ago (the witness

explained her difficulty as being due to how bad it made her feel to describe Mrs. Koker's injuries); and (6) numerous insinuating questions by defense counsel which implied that Mrs. Koker had a peculiar mental state."

Resume: The appellate court opinion goes on to say no objection was raised as to any of this conduct by the defense attorney. The objections at trial would have enabled the court to correct any improper conduct by instructing the jury to disregard it. That the appellate court will review matters not raised at trial only if the conduct is so flagrant that no action by the trial court could have removed its prejudicial impact.

Comments: F. V. Betts, the attorney for Beatrice Koker in that trial failed to object to any of this conduct at the trial, nor explain to the jury, nor cross-examine in redirect, nor protect his client from this

EXCERPTS - PRIOR APPEAL OPINION - 1978
1976 Trial - Permanent Injuries Comments

C-26

prejudicial implementation of tactics harmful. The conduct is not considered by the court to be so flagrant that objection from my own counsel would have corrected it by court ruling.

The fact of no protection from the only person there to protect me, and there for the purpose of protecting me in his superior position, is now an element of malpractice against that attorney in the case at bar.

Mr. LeMaster's attorney in the case at bar persists in misleading the court that his client should be released of liability for this "conduct." Mr. LeMaster is not charged with this conduct in the case at bar, because the issue is that my attorney could and should have prevented it and/or annulled it by objections.

It is significant to note the malpractice action in which this "conduct" is the responsibility of my own attorney - - SJ DENIED!!!

EXCERPTS - PRIOR APPEAL OPINION - 1978

1976 Trial - Permanent Injuries Comments

C-26(a)

Page 4:

Prior 1978 Appeal: Quoting Appellate Court:

"Next, the Kokers assign error to the admission of testimony about letters Mrs. Koker wrote to her doctor and the display of those letters before the jury without their being admitted into evidence. The letters were considered by Mrs. Koker's doctor before he drew his conclusions and thus were relevant." "Moreover, no objection was made at the trial, and the question may not be reviewed on appeal."

Resume: The court is saying they cannot consider the error of the "letters" in a prejudicial viewing by the jury, because there was no objection by plaintiff counsel, Mr. Betts. The court did not understand that Dr. Freidinger was to testify after reading the letters during the lunch hour. But that after prejudicial viewing for hours, the letters

EXCERPTS - PRIOR APPEAL OPINION - 1978 (264)
1976 Trial - Permanent Injuries Comments

disappeared from view of the jury and the jury was not informed as to why the doctor did not testify as promised to them just before the lunch hour. From my own knowledge and experience I say it was told to me by one of the jurors that they jury asked for those letters in deliberation. They never were put into evidence.

Comments: In the Complaint (supra) Paragraph 1.73: Quoting on this matter of prejudice and letters:

"Proof of prejudice in plaintiff attorney Betts acts and omission is an opinion by the United States Supreme Court. Burgett v Texas 389 U.S. 109 (1967) Chief Justice Warren points to prejudice relating to letters. He says:

"Curiosity of the jurors may be aroused by unusual circumstances such as extended legal argument, hearings in the absence of the jury or the removal of evidence that consumed considerable time at trial."

9 RP pages argument. Hours prejudicial viewing.

EXCERPTS - PRIOR APPEAL OPINION - 1978 C-27
1976 Trial - Permanent Injuries Comments

Prior 1978 Appeal:

Comments: Beatrice Koker can understand the schedule of doctors preventing testimony at a set time. It is significant to note that Kenneth L. LeMaster refused to recognize this fact when he called a mistrial 1975 over the fact a doctor could not come at the defense attorney's commanded time. The Complaint

CP FILE #1 p 697 - Appeal 9346-1-I: AND)
) SAME
 CP FILE #1 p 425 - Appeal 8935-8-I:)

Paragraph 2.26/17-29: is a xeroxed copy of the doctor's note in the record, and the typed-out deciphered. This proves the doctor did not refuse to testify and would come later.

EXCERPTS - PRIOR APPEAL OPINION - 1978 C-27(a)
1976 Trial - Permanent Injuries Comments

Page 4:

Prior 1978 Appeal: Quoting Appellate Court:

"The Kokers next assign error to the admission into evidence of what they term "gibberish notes." These notes were a list of Mrs Koker's injuries which she prepared prior to her deposition."

Resume: The court is under the manifest mistaken opinion that the list was read to the jury to show those injuries she claimed at her deposition which were not being asserted at trial. They interpreted the list as the defense wanted the jury to interpret them, that an injured woman, middle-aged had difficulty sorting our real injuries from imaginary ones.

COMMENTS: The correct facts are that Mr. Betts asked me to make the list of symptoms and what I could do and not do, for him. The defense attorney made this list an "exhibit to

EXCERPTS - PRIOR APPEAL OPINION - 1978
1976 Trial - Permanent Injuries Comments

C-27(4)

the deposition" and that was deliberately inflamed to the jury as Ex 20. The depositions are not allowed to go to the jury, thus the exhibit should not have been allowed to be given to the jury. This is a list of "phrases" and short reminders to myself to be discussed with my attorney as a work-product.

In trial, the jury was explained 25% of the list, and 75% went to them prejudicially viewed as a mental status attack on this plaintiff. At the deposition I said that no one would understand those notes except myself and was concerned when the defense attorney made them an exhibit. Mr Betts said not to worry, he would take care of it. He did not take care of it, and it is an element in the malpractice also.

I call attention of the United States Supreme Court to Justice Stone whose papers were given to a writer when he passed away.

Those papers included opinions of the United States Supreme Court with notes on the margins. My "jotted down notes" went to the court and were used prejudicially and exploited by the defense attorney LeMaster whose thrust in trial was to depict this honorable, truthful, trustworthy lady as someone senile, mentally incapacitated et al, and did so with aiding and abetting from my own attorney.

Page 4: Page 5:

Prior 1978 Appeal:

"The Kokers next assign error to the overall effect of the rulings of the trial court. The Kokers contend that they did not receive a fair trial, because the court was partial to the defense. We have examined the instances cited by the Kokers and have carefully reviewed the entire record. The Kokers re-

EXCERPTS - PRIOR APPEAL OPINION - 1978

1976 Trial - Permanent Injuries Comments

C. 28(a)

ceived a fair trial; the trial
judge was not biased for or against
either party." (Emphasis Mine)

Comments:

The "fair trial" the Kokers received refers to no bias for or against either party. Without truth there cannot be a fully and fairly heard trial in a meaningful manner.

Page 6:

Prior 1978 Appeal: Quoting Appellate Court:

"The Kokers next assign error to the use of exhibit No 1, Mrs. Koker's doctor's bill, which they contend was not given to the jury."

Resume: The exhibit itself was stamped "FILED" and "ENT'D" and the Court of Appeals concentrated on the index to Exhibits and did not find the Ex 1 listed as in evidence.

Comments: The Ex 1 is offered in the RP but is not entered. Transcript of trial

EXCERPTS - PRIOR APPEAL OPINION - 1978
1976 Trial - Permanent Injuries Comments

C-28(4)

controls over docket entries. (Appeal And Error Wests Key 664 (1) The Court of Appeals considered only that the Exhibit was marked even though incorrectly.

THERE WAS ABUSE OF DISCRETION BY
THE COURT BUT PLAINTIFF BEATRICE
KOKER'S ATTORNEY IN 1976 TRIAL
DID-NOT GIVE AN ADEQUATE OFFER OF
PROOF, AND THE APPEAL WAS LOST

MALPRACTICE

Page 5: Page 6:

Prior 1978 Appeal; Quoting Appellate Court:

"The Kokers next assign error to the refusal of the trial court to allow a recently discovered lay witness to testify to the changes in Mrs. Koker's health and activity level after the accident. The trial court ruling was based upon the cumulative nature of the testimony.

EXCERPTS - PRIOR APPEAL OPINION - 1978
1976 Trial - Permanent Injuries Comments

C-29

Two other lay witnesses testified
to the same changes."

Resume': The court goes on to say a witness discovered shortly before trial may be allowed to testify unless the party calling the witness deliberately withholds the person's name. There is precedent that it might be abuse of discretion to refuse to allow somewhat summulative testimony of a witness without giving the parties prior notice of a rule limiting witnesses. The court then referred to the inadequate offer of proof by my own attorney F. V. Betts.

Comments: Herein is another untruth to the court. I have since found carbon copies of letters written to F. V. Betts informing him of the "third lay witness" in 1975 and 1976 at least. It proves that the offer of proof is inadequate and false to a judge.

Please See: COMPLAINT CP FILE #1 p 697 -

Paragraph 1.17 Through Paragraph 1.22:

EXCERPTS - PRIOR APPEAL OPINION - 1978
1976 Trial - Permanent Injuries Comments

C-29(a)

This will prove that F. V. Betts received information about the third lay witness and what she knew and that it was different from the other "before and after" witnesses.

Paragraph 1.21: 1.22:

How then does one account for the offer of proof by F. V. Betts in the trial of 1976 and found to be inadequate by the Court of Appeals:?

Quoting Page 5: Page 6:
1978 Appellate Court
Opinion: (Supra)

This Is Mr. Betts Inadequate Offer of Proof

"My offer of proof in this case would be that this lady is Mrs. Conley. The first time I ever talked to her, saw her, knew anything about her as to what she might say or had anything to do with it, was on the evening of the 9th. I went out to her home. I went out there the day before. She was in Aberdeen. She would testify that she knows the plaintiff, that she has visited her home, that she has seen the difference between her

present physical condition and that which was apparent and which she knew about before the accident, and that she would further describe her differences in activity. That is generally the subject matter."

Comment: The third lay witness in affidavit shows Mr. Betts knew her and what she would have to say long before trial. See: APPENDIX A-35: A-36; in the case at bar.

Mr. Betts was not truthful about this witness to the judge. My injuries are subjective and lay witnesses are imperative.

The Court of Appeals in the prior appeal could not consider my offer of proof in detail for the first time on appeal. The appeal was lost. The malpractice action was denied summary judgment in Superior Court.

I found copies of the letters sent to Mr. Betts about this witness while writing the complaint in the case at bar in 1979 and incorporated the letters into the evidentiary complaint.

EXCERPTS - PRIOR APPEAL OPINION - 1978
1976 Trial - Permanent Injuries Comments

C-30

Page 6:

Prior 1978 Appeal: Quoting Appellate Court:

"The Kokers' next assignment of error concerns the jury instruction on measurement of damages. The Koker's counsel did not object to the instructions, objection concerning jury instructions cannot be raised for the first time on appeal."

Comments: This concerns the Pattern Jury instruction 30.01. To change the pattern instruction to "admitted liability" as appropriate for the 1976 trial, there must be two phrases deleted. Both attorneys submitted the same instruction and did not delete anything, thus offering an instruction in which the jury is to determine the liability.

The court of appeals found necessity for my own attorney's objection to his own instruction and without objection, no ruling on appeal.

EXCERPTS - PRIOR APPEAL OPINION - 1978

1976 Trial - Permanent Injuries Comments

C-30(a)

Page 6:

Prior 1978 Appeal: Quoting Appellate Court:

"The Kokers have moved to raise another issue on appeal concerning the failure to instruct the jury on damages for the aggravation of a dormant, preexisting condition. The instruction was initially proposed by the Kokers counsel, but abandoned because he believed that there was no evidence to support it. This decision precludes raising the issue on appeal."

Comments: The Appellate Court knew from the record that several doctors testified to the aggravated preexisting condition, and also Dr. Sata who took the myelogram was never called to testify. His changed medical report was kept concealed from the other doctors IN COMING TO THEIR CONCLUSIONS and from the Judge, the jury and the clients. Mr. Betts

EXCERPTS - PRIOR APPEAL OPINION - 1978
1976 Trial - Permanent Injuries Comments

C-30(6)

is responsible for this harm and lost damages.
He is sued for malpractice in cause 1, and
summary judgment was denied.

Page 6: Page 7:

Prior 1978 Appeal: Quoting Appellate Court:

"The Kokers suggest another new
issue in their reply brief. They
contend that the jury was guilty of
prejudicial misconduct by spending
several hours debating Mrs. Koker's
"guilt" or "innocence" despite
Sage's admission of liability.
Issue raised for the first time in
the reply brief will not be consid-
ered on appeal."

Comments: The entire opening appeal on the
prior "for new trial" appeal, was voicing
"confusion of the jury." The reply brief
held the affidavit of the jury foreman and
specific reference that it was the PROOF of
the confusion implemented in opening brief.

EXCERPTS - PRIOR APPEAL OPINION - 1978
1976 Trial - Permanent Injuries Comments

C-31

The jury foreman affidavit will be
found as Exhibit I - COMPLAINT CP FILE #1
p 697 - APPEAL #9346-1-I: and CP FILE #1
p 425 - APPEAL #8935-8-I: QUOTING:

"Stephen M. Wood 7712 Dayton Avenue
North, Seattle, Washington being first
duly sworn on oath deposes and says:

That

I, stephen M. Wood, Foreman of
the jury in the above mentioned
case of Koker v Sage, relate by
this affidavit there was a problem
of confusion on the juror's part
in deliberation, whether we were
supposed to find the guilt or
innocence of Mrs. Koker.

In jury deliberation of this
case, it was a time consuming
effort of approximately 2 hours for
me to convince the jurors there was
no guilt or innocence of Mrs. Koker
involved but only the damages to be
determined.

We, the jury, went through a
voting process to establish the
innocence of Mrs. Koker, and I, the
jury foreman, explained no guilt of
Mrs. Koker was involved. That the
boy had admitted liability for the
accident and was at fault."

/s /
Stephen M. Wood

C-31(a)

PRIOR APPEAL

The rulings of the court in the prior appeal pointed to tort. The tort began with the pleadings filed June 7, 1979, after trying unsuccessfully for three years to obtain a new trial.

The case at bar and two appeals
is the result.

Comments: I am a witness as a victim of permanent injuries, wearing a leg brace for life, feeling the daily pain, enduring the physical and emotional and mental aftermath and anguish of a broken way of life. I am a victim and a witness to an unconstitutional trial 1976, and overpowered by deceit, untruths, obstruction of justice, concealment, meaningless appeals et al, et al. I live as the victim and witness of the subject matter of this case, anguished and tormented. Oppressed and rejected. Evaded and avoided seeking justice in the courts of our Land.

EXCERPTS - PRIOR APPEAL OPINION -1978
1976 Trial - Permanent Injuries Comments

C-31(b)

MANIFEST ERROR OF THE
APPELLATE COURT RULINGS AND
OPINION

The opinion of the court eliminates all errors, arguments, issues evading and avoiding proper weight of appeal. There is utter disregard for the lack of burden of proof, general denial, not keeping the summary judgment rule et al.

The court addresses CONSPIRACY in the opinions set forth for Def #1 Appendix A-9 and A-10: and for Def #2 APPENDIX B-9;

All the authorities are with Def #1.

The complaint in the case at bar has no lawful purpose. By law there is implied agreement, agreement from conduct, circumstantial evidence and all other. One attorney tells a lie to the judge and jury misrepresenting and suppressing material facts to injuries and plaintiff attorney knows of this fact and keeps silent when there is a duty to speak. The four untruths and Ex 2-3-4 of the Complaint (supra) present

jury questions. The authority used by the court is identical to the reply brief of Def-One, with about 3 exceptions. Those authorities do not address the issues in the case at bar. Not one of them holds deceit nor lies, nor suppression of fact material to injuries, nor lying to judges and juries. The court does not address these issues at bar, but glosses by as if they do not exist. Not relevant authority.

Please take judicial notice there is no discussion of the burden of proof of the moving party. The record indicates this petitioner presented affidavits in the opposition to ensure summary judgment denial.

CP NUMERICAL ORDER APPENDIX A-37-38-39-40: #1

APPENDIX B-15-16-17-18: #2 Plaintiff

made many affidavits in opposition to both defendants. The proof was from the record and there were no argumentative assertions or suspicions. FACT. PROOF. EVIDENCE.

The moving party did not have adequate

affidavits - - general denials, no burden of proof for either defendant. It is the burden also upon the moving party to show there are no material facts, and they did not do so.

The record shows lies to the judges and jury and the defendants cannot deny what is proven from the record. There are affidavits Ex 2-3-4 of the Complaint (supra) of conspiratorial concert and the Court of Appeals Division I say all of these statements and events are consistent with a lawful purpose - - - Deceiving the court is obstruction of justice and treble damages by law. Agreements do not have to be written.

The court brings up the subject of a contingency fee. I have questioned why an attorney on a contingency fee would lie to a judge, and cover up lies of a defense attorney and all other events that brought for a denied summary judgment for malpractice.

The trial court and the appellate court are in manifest error in granting summary judgment and affirming on appeal that which is only for the trier of the fact. These state courts are adjudicating summary judgment!

The court next addresses misrepresentation, fraud and deceit. Appendix A-11:

AND A-12: Def-One: Appendix B-9: B-10: #2

The court is deliberately bypassing constructive fraud, and the "various untrue statements" referred to are lies material to permanent injuries and in concert covered up, concealed by the plaintiff attorney at trial.

Again the court is implying all these misdeeds are honest. The trial court did not hold that collateral estoppel applied to Def-Two. In fact the defense below was res judicata, and collateral estoppel comes as new on appeal. And so presented to that court. The trial court order says "no material facts." That is a manifest error also.

Intent and motive is only for the trier of the fact. There is obvious lack of consideration of 28 USCA Rule 56 and CR 56 by both defendants and the court.

This court opinion is relevant to the questions presented because it shows the severance with the Constitutional Rule 56.

The court states LeMaster's intent to misrepresent, deceit or commit a fraud on either Koker or HER COUNSEL was not presented. The court must have misunderstood or evaded and avoided the evidence that Def-Two (Le Master) and Def-One (Betts) knew of the misrepresentation and deceit and concealment of material facts to injuries, and committed in concert together so there is no possible way LeMaster could misrepresent to Betts. Untruths #1 #2 #3 #4: Complaint (Supra)

The court refers to conduct of Mr. Le Master which has no bearing on him in this case, because that conduct is the malpractice

against my own attorney for not objecting nor stopping the defense attorney. This conduct is the erroneous res judicata claim of Def-Two and does not apply. The court is in error for allowing to be misled. This conduct listed in old opinion of prior appeal in APPENDIX C-25; 25(a);

There is only one case in the opinion for Def #2 in APPENDIX B 9(a): LUCAS V VELIKENJE 2 Wash App 888, 471 P 2d 103 (1970). Therein is the case of Bordeaux v Ingersoll Rand Co., 71 Wn 2d 392, 429 P 2d 207 (1967). At page 396: Quoting:

"Both doctrines require a large measure of identity as to parties issues and facts, and in neither can the party urging the two doctrines as a defense be a stranger to the prior proceeding. He must have been a party, a participant, or in privity with either, and the action out of which the bar is claimed must be qualitatively the same as the case in which the doctrine is set up as a bar, . . . "

MANIFEST ERROR OF THE APPELLATE COURT
RULINGS AND OPINION

C-37

Quoting Owens v Kuro 56 Wn 2d 564,
354 P 2d 696 (1960):

"A judgment is not res judicata nor is one collaterally estopped by judgment in a later case if there is no identity or privity of parties in the same antagonistic relation as in the decided action An estoppel must be mutual and cannot apply for or against a stranger to a judgment since a stranger's rights cannot be determined in his absence from the controversy."

DENIED SUMMARY JUDGMENT
REVERSED ON APPEAL

The ruling of the appellate court is reversing a denied summary judgment on the flimsy premise the affidavit not sufficient and no material facts. Malpractice action includes a lie to a judge by Def #1 alone.
CP FILE #1 p 697 - Para 1.17 Through 1.25:
Appeal #9346-1-I: That is a material fact.

The "affidavit of lack of standard of care" is CP FILE #123 p 244 and is set forth in APPENDIX A-19 Through A-34:

Further evidence to lower court of lie to judge about a witness is the two affidavits from the witness set forth in the APPENDIX A-35: A-36: Also as Ex 9 & 10 in CP FILE #107 p 415:

The same appellate court that reversed a denied summary judgment with untruth to a judge and bad faith et al, reversed a granted summary judgment because an atty had not informed a client of settlement,

BLOOD V ANDERSON Appeal #9390-8-I Court
of Appeals Division I.

[No. 9390-8-I. Division One. May 24, 1982.]

MARY ANN BLOOD, *Appellant*, v. GEORGE D.
ANDERSON, ET AL, *Respondents*.

Appeal from a judgment of the Superior Court for King County, No. 865121, Frank J. Eberharter, J., entered September 24, 1980. *Reversed* and *remanded* by unpublished opinion per Williams, J., concurred in by Callow and Ringold, JJ.

This is not equal protection from the very same court, with one same judge on both panels, reversing a denied summary judgment in the case at bar.

This case before the bench is a civil conspiracy instead of criminal conspiracy the court is addressing. The gist of crime of conspiracy is agreement to commit unlawful act, while gist of tort is damage resulting from overt act or acts done pursuant to common design. 7A Pacific Digest 2d 10.
West's Key 6:

OUTRAGE

The court uses the authority of Grimsby

in both opinions. APPENDIX A-12 and A-13: #1
APPENDIX B-10: #2

That case is superceded by the authority of ROUNDS V UNION BANKERS INS CO 22 Wash App 613, 590 P 2d 1286 (1979): (4) it says the nature of claim of outrage is such that trial court should have benefit of open court testimony before determining as a matter of law. Washington courts now even recognize a cause of action for emotional distress and recognition of a person's right to peace of mind.

The appellate court does not mention the trial court's ruling on Cause IV, the outrage, is not properly pleaded.

The court makes much of quoting this plaintiff that "I don't see that these people want to go about doing harm deliberately." To quote something out of context distorts the meaning of the thought.
RP "SUMMARY JUDGMENT" May 16, 1980 p 55/22-25:

p 56/1-3: Quoting Beatrice Koker:

"And I think that people who are guilty of these wrongs, when they have been made to pay the redress and remedy maybe they will feel better, too. I don't see that these people WANT TO GO ABOUT doing harm deliberately, I think this is something that they did, (do deliberately) and maybe they regret it, I do not know. I know I regret that they did it because I live with it, every day."
(Emphasis Mine)

APPENDIX A-13: #1 (First Two Lines Are Answered)

The contents of the two opinions. The evading, avoiding, misunderstanding, shunning of the errors and issues on appeal, was so appalling to this petitioner that I could not accept that a judge wrote them.

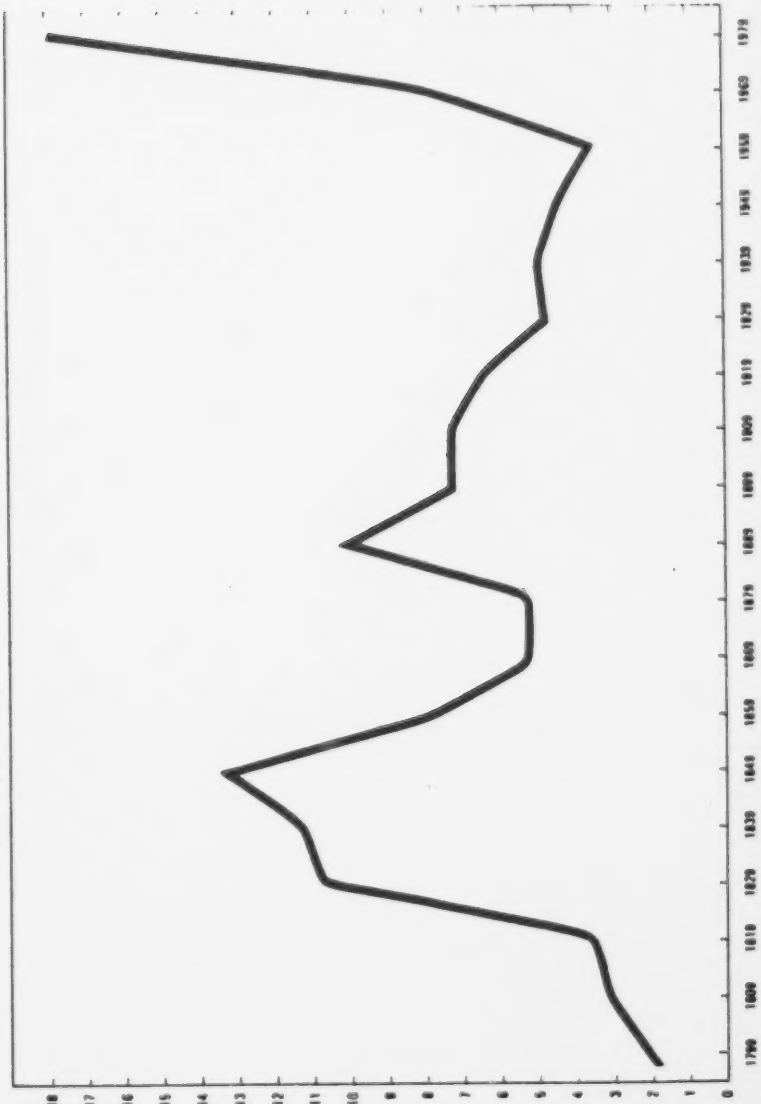
The ruling was per curiam and had the opinion apprised the thrust of review, I would not have questioned it. As it was, I asked for the author of the opinions under RCW 42.17 Public Disclosure Act and was refused all the way to State Supreme Court.

Legal Malpractice
In The United States

LEGAL
MALPRACTICE

Ronald E. Mallen
Victor B. Levit

Figure 1
RELATIVE FREQUENCY OF LEGAL MALPRACTICE ACTIONS IN THE UNITED STATES



C-42

RAP 13.4(b): (1) COURT OF APPEALS DIVISION
I IN CONFLICT WITH STATE SUPREME COURT

BERNAL V AMERICAN HONDA 11 Wash App 903
527 P 2d 273 (1974) DIV I

This was a personal injury case. The plaintiff appealed summary judgment granted to the defendant in trial court. Court of Appeals Div I affirmed.

Washington State Supreme Court En Banc
REVERSED: 87 Wn 2d 406, 553 P 2d 107 (1976)
stating qualification of expert to be judged by trial court. That the trial court's exercise of its discretion in finding such competency of an affidavit will not be disturbed in the absence of a showing of abuse.

In the case at bar, the Court of Appeals Div I reversed a denied summary judgment on premise of standard of care affidavit as

CASES BELIEVED TO SUSTAIN JURISDICTION
OF THE UNITED STATES SUPREME COURT

C-43

being insufficient in their opinion, and without consideration nor mention of abuse of discretion by the lower court.

The "lack of standard of care affidavit" will be found in CP FILE #123 p 244 - Appeal 9346-1-I and also in EXCERPT in the APPENDIX A-19 Through A-34;

Be advised of a "conspiracy of silence" that necessitated a continuance. The Lawyer Referral advised me to leave the city to obtain the attorney affidavit. Finally it was obtained by an independent attorney not emotionally involved nor silent. Seattle.

The trial court denied summary judgment to malpractice, considering the "affidavit." The Court of Appeals Div I, reversed a denied summary judgment based upon the affidavit of standard of case which they deemed insufficient, yet there was no abuse of discretion. Used as an excuse to evade.

CASES BELIEVED TO SUSTAIN JURISDICTION
OF THE UNITED STATES SUPREME COURT

C-43(a)

RAP 13.4(b): 1. COURT OF APPEALS DIVISION I
IN CONFLICT WITH STATE SUPREME COURT

HELLING V CAREY 83 Wn 2d 514, 519 P 2d 981
(1974):

There is a verdict for defendant in an action for medical malpractice, affirmed by Court of Appeals. 8 Wn App 1005: STATE SUPREME COURT REVERSED. 83 Wn 2d 514, 519 P 2d 981 (1974):

In this case the medical experts gave testimony of undisputed standard of care. Supreme Court found issue to be whether defendant's compliance with standard of care should insulate them from liability under facts plaintiff lost substantial vision due to failure of Def to timely give pressure test for glaucoma.

In the case at bar, there are lies to the judges and jury and obvious disregard of standard of care of an attorney and other specific examples. COMPLAINT CP FILE #1
p 697: Paragraph 1.16 Through 1.84:
CP FILE #123 p 244: APPEAL 9346-1-I

C-44

RAP 13.4(b): 2. DECISION OF COURT OF
APPEALS IN CONFLICT WITH DECISION OF
ANOTHER COURT OF APPEALS

FELSMAN V KESSLER 2 Wash App 493, 469
P 2d 691 (1970): Division I Court of
Appeals in Conflict With Division III

This authority is wrongful death.
Summary judgment was awarded defendant.
Plaintiff appealed. DIVISION III COURT OF
APPEALS REVERSED AND REMANDED: P 496 and
497 saying conspiracy elements and factual
knowledge within exception, and opposing
party shall be allowed opportunity to
disprove by cross-examination and by the
demeanor of moving party.

Beatrice Koker, plaintiff in case at
bar filed evidentiary, verified complaint
and correlated Memorandum In Opposition
to SJ the entire Complaint. The proof is
in the record and the motive and intent
reasons are particularly within the know-
ledge of the moving parties. My trial denied.

Motive and intent are material facts particularly within the knowledge of the moving parties for summary judgments - Def-One Betts and Def-Two LeMaster. It is advisable that the cause proceed to trial in order that Beatrice Koker may be allowed penetrate such facts by cross-examination, witnesses, testimony and by the demeanor of the moving parties while testifying. United States v Logan Co. 147 F Supp 330, (W.D. Pa 1957); Subin v Goldsmith 224 F 2d 753 (2d Cir., 1955); Hudesman v Foley 73 Wn 2d 880, 441 P 2d 532: (1968); Balise v Underwood 62 Wn 2d 195, 381 P 2d 966 (1963):

Elements of a conspiracy and factual knowledge of the defendants belong to the trier of the fact.

"Fairness of procedure is due process in the primary sense."
Fitzgerald v Hampton (1972) 467 F 2d 755, 152 US D.C. Appl, 93 S Ct 549, 408 US 1055, 34 L ed 2d 509:

CASES BELIEVED TO SUSTAIN JURISDICTION
OF THE UNITED STATES SUPREME COURT
(Felsman v Kessler)

C-45 (a)

RAP 13.4(b): 2. DECISION OF COURT OF
APPEALS IN CONFLICT WITH ANOTHER DIVISION
OF COURT OF APPEALS

IN ESTATE OF WAHL: 31 Wash App 815 (1982)

Superior court granted summary judgment and
beneficiaries appeal. Court of Appeals Div
III REVERSED AND REMANDED. Quoting (1)

"Summary judgment is improper where,
even though evidentiary facts are
not in dispute different inferences
may be drawn therefrom as to ultimate
facts, such as intent or
knowledge." PRESTON V DUNCAN
55 Wn 2d 678, 681, 349 P 2d 605,
(1960): SANDERS V DAY 2 Wash App
393, 398, 399, 468 P 2d 452 (1970)

In the case at bar the superior court,
the Court of Appeals and the State Supreme
Court ignored and evaded facts, proof,
evidence, inferences, presumptions, and
the 28 USCA Rule 56 and State Cr 56 -
Summary Judgment.

In addition the case at bar for both
defendants is bad faith from beginning to
end and should not have been granted summary
judgment and affirmed on appeal and denied
review in the State Supreme Court.

PETITION FOR REVIEW STATE SUPREME COURT
CONFLICT CASES 1. COURT OF APPEALS IN
CONFLICT WITH STATE SUPREME COURT

GEISE V LEE 10 Wash App 728, 519 P 2d
1005 (1974); DIV I 84 Wn 2d 866, 529
P 2d 1054 (1975);

In this cited case a patient sought damages from an ophthalmologist for failure to inform her of abnormalities indicating a risk of glaucoma and for failure to administer additional tests.

The Superior Court for King County entered judgment on verdict in favor of the defendants. The Court of Appeals affirmed saying the defendants' conduct met standard of care. The Washington State Supreme Court reversed and remanded for new trial holding that informed consent doctrine required disclosure of physical abnormalities and that the standard of reasonable prudence applied under the circumstances.

CASES BELIEVED TO SUSTAIN JURISDICTION
OF THE UNITED STATES SUPREME COURT
(Geise v Lee)

C-47

SIGNIFICANT PREJUDICE-
BIAS DIVISION I CONFLICT
RULINGS

Olympic Fish Products v Lloyd 23 Wash
App 499, 597 P 2d 436 (1979): Div I
93 Wn 2d 596, 611 P 2d 737 (1980):

A fish processor sought damages from
a corporate officer for the officer's
interference and with the corporation's
obligation to sell fish to the processor.
The Superior Court entered summary judgment
in favor of the officer. The Court of
Appeals (Div I) held genuine issue of
material fact existed as to the intent of
the officer and reversed summary judgment.
The State Supreme Court held that the
liability of officer depends on presence or
absence of good faith and a question of fact
exists as to such test and affirmed and
remanded case for trial. THE SAME COURTS
FOR THE CASE AT BAR EVADED SUCH A TEST!

CASES BELIEVED TO SUSTAIN JURISDICTION
OF THE UNITED STATES SUPREME COURT
(Olympic Fish Products v Lloyd) C-48

SUMMARY JUDGMENT

State Of Washington
CR 56

LAMON V McDONNELL DOUGLAS CORP

An airline stewardess sought damages from an aircraft manufacturer for injuries suffered in a fall through an open escape hatch. Superior Court granted summary judgment to defendant. The court of appeals in nonunanimous decision reversed the summary judgment at 19 Wn App 515 and remanded for trial. The Supreme Court of the state held the record discloses material fact, and affirmed the Court of Appeals.

The failure to challenge the sufficiency of an affidavit prior to a trial court ruling on a motion for summary judgment waives any deficiency in the affidavit.

Likened to the case at bar, there was never any motion to strike the affidavit nor any portion thereof. Deficiency is thus waived without such a motion.

CASES BELIEVED TO SUSTAIN JURISDICTION
OF THE UNITED STATES SUPREME COURT
(Lamon v McDonnell et al)

C-49

MORE CASES BELIEVED TO
SUSTAIN JURISDICTION OF
UNITED STATES SUPREME
COURT

In MORRIS V McNICOL 83 Wn 2d 491, 419

P 2d 7 (1974): is an action for damages.

Plaintiff appeals from summary judgment in favor of defendants. Supreme Court of the State Of Washington reversed and remanded stating the reasonableness of a party's acts is a question of fact and granting summary judgment improper.

Was there anything reasonable about the acts of Def-One and Def-Two in the instant case with proof of untruth and deceit et al from the record? Why then discrimination of granting summary judgment to two defendants in concert of wrongful acts together? The defendants did not present evidence, and did not meet the burden of proof and in entirely obvious manner evaded, avoided and escaped. All this affirmed on appeal, plus reversing a denied summary judgment in added prejudice and bias. This case set forth _____

SUMMARY JUDGMENT

BUNZEL v AM. ACADEMY OF ORTHOPAEDIC

SURGEONS 165 Cal Prtr 433 (1980)

107 Cal App 3d 165 Headnotes: 1. 2. 3.

An orthopaedic surgeon brought action against society of orthopaedic surgeons for damages and for an order admitting him to membership. Summary judgment entered in favor of society and the orthopaedic surgeon appealed. The Court of Appeals held that issue whether society wielded monopoly power and professional concerns so as to clothe it with a public interest, requiring it to exercise fiduciary responsibility with respect to acceptance or rejection of membership applications was for the trier of the fact to determine. Reversed.

Summary judgment is a drastic measure which deprives the losing party of trial on merits. Doubts should be resolved in favor of party opposing motion. Affidavits of non-moving party are liberally construed. CASES BELIEVED TO SUSTAIN JURISDICTION OF THE UNITED STATES SUPREME COURT (Bunzel v Am Academy Of Orthopaedic -- ") 51

SUMMARY JUDGMENT

MURPHY V ALLSTATE INS CO Headnotes: (1)(5)

147 Cal Rptr 565 (1978) 83 Cal App 3d 38:

Insureds brought suit against the insurer, asserting five causes of action for fraud, conspiracy to defraud, bad faith and intentional infliction of emotional distress. Superior Court entered summary judgment for insurer, and insured appealed. Reversed. None of the insured's alleged causes of action were actions on the policy of insurance.

The party moving for summary judgment has burden of proof. If the moving party's showing is insufficient, adverse party is-not required to demonstrate the validity of his claims or defenses or even to file counterdeclarations or counteraffidavits. West's Ann Code Civ Proc §437c. It is not the function of a motion for summary judgment to test sufficiency of the pleadings.

Cases Believed To Sustain Jurisdiction
Of The United States Supreme Court
(Murphy v Allstate Ins Co)

C-51(a)

SUMMARY JUDGMENT

GRAVES V P.J. TAGGARES CO 94 Wn 2d 298,
616 P 2d 1223 (1980); Headnotes (1)(2)(3):

The Superior Court refused to vacate a summary judgment in favor of the plaintiff as to liability and ultimate judgment awarding damages. The Court of Appeals reversed the refusal to vacate at 25 Wn App 118 and remanded for a trial on issue of damages. The Supreme Court of the State held that entry of summary judgment was error, and that the surrender of rights as to liability as well as a jury trial were not binding. The court affirms the Court of Appeals action in vacating the judgment, but remands for a trial on all issues except those determined by valid stipulations.

A party moving for summary judgment must show undisputed facts entitle him to summary judgment. Whether relationship between superior and subordinate is one of

Cases Believed To Sustain Jurisdiction
(Graves v P.J. Taggares Co)

C-52

of agency is question of law only if the facts are undisputed and subject to only one interpretation.

An attorney has no authority to surrender a substantial right of his client unless specific authorization has been granted by the client. The rights to trial by jury and to contest an issue upon which liability turns or the amount of a damage award are substantial rights for the purpose of this rule.

In the instant case, there is proof of an aggravation of pre-existing condition. To some degree already in the transcript of the trial. But the predominant proof is withheld from the jury by deliberately not calling the medical doctor who performed the myelogram. The deposition by this doctor also held proof, but the doctor was not called to testify and the deposition was-not transcribed. Complaint (supra) Para 1.76:

Cases Believed To Sustain Jurisdiction
(Graves v P.J. Taggares Co) C-52(a)

SUMMARY JUDGMENT

BERNARD V VIDRINE 365 SO 2d 525 (1976)

(Third Cir) Headnotes: (1)(2)(3):

Widow whose husband was killed in small plane he piloted which collided with another small plane, brought suit. Summary judgment was granted dismissing the air service which maintained and rented the plane that collided with plaintiff's husband's plane. Widow appealed. The Court of Appeals held summary judgment precluded by existence of unresolved issue of fact. Reversed and remanded.

Burden of proof rests on party who moves for summary judgment and all doubts are resolved against him. Summary judgment is-not intended to be used as vehicle to circumvent trial of genuine issues even if it appears to the court there is little chance of success at trial. Use of summary judgment to deny "day in court" applied with caution in interest of fairness, due process.

Cases Believed To Sustain Jurisdiction
(Bernard v Vidrine)

C-52(4)

SUMMARY JUDGMENT

FREIDMAN V MEYERS (CA NY 1973) (2nd Cir)
482 F 2d 435:

Real estate syndicate investor brought action against promoters and managers of syndicate for alleged fraudulent diversion and misappropriation of funds by defendants. A judgment was entered summarily dismissing a complaint and plaintiff appealed. The Court of Appeals, held, inter alia that defendants failed to establish their burden of showing that there was no genuine issue with respect to the material facts including absence of fraudulent intent on their part and plaintiff's knowledge of facts allegedly concealed which would render the suit time barred precluding summary judgment. Reversed.

Summary judgment is particularly not-appropriate where it is sought on basis of inferences which parties seek to have drawn.

Cases Believed To Sustain Jurisdiction
(Freidman v Meyers)

C 53

SUMMARY JUDGMENT

SHERWOOD V MOXEE SCHOOL DIST

363 P 2d 138 (1961) 58 Wn 2d 351: (1)(2)

In this cited case, the State Supreme Court of Washington followed the accepted rule of the United States Supreme Court in Conley v Gibson 335 US 41, 45, 2 L Ed 2d 80, 78 S Ct 99: Reversed the dismissal for failure to state claim.

In Conley v Gibson (supra) The United States Supreme Court, in simple unmistakable terms, stated the test to be applied in passing upon this motion as follows:

" . . . In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. . ."

Headnote 1: No longer is it necessary for plaintiff to plead the facts "constituting cause of action." (Beatrice K. Proved Facts.)

Cases Believed To Sustain Jurisdiction
(Sherwood v Moxee School Dist)

C-54

SUMMARY JUDGMENT

HALPERN V LAVINE et al 60 NYS 2d 121 (1946)

The wife of an insured had been a beneficiary under insurance policy for about 15 years. The unexplained change of beneficiary from wife to niece and cousins made two weeks before the death of the insured would seem to require scrutiny.

Summary judgment granted in favor of defendants and plaintiff wife appeals. The remedy of summary judgment is essentially one of interest of justice. Under the circumstances of this case, substantial justice requires a trial and full disclosure of facts. Judgment and order reversed and motion for summary judgment denied.

The case at bar granted summary judgment which is misapprehended, misused, misappropriated and abused. The result is injustice and denial of a right.

Cases Believed To Sustain Jurisdiction
(Halpern v Lavine)

C-55

SUMMARY JUDGMENT

WITTLIN V GIACALONE 154 F 2d 20 (1946):

This action for specific performance of a contract for the sale of certain realty. Defendant appeals from order granting summary judgment to plaintiffs. Reversed and remanded with directions. (1)(2)(3)(4):

One who moves for summary judgment has burden of proof. The courts are critical of papers presented by moving party but not of the opposing papers. Where motion for summary judgment was signed only by counsel and not in affidavit form, motion not properly to be weighed as to its factual statements in determining summary judgment.

Neither defendant in case at bar kept burden of proof. Motion not in affidavit form. Skippy presentation. Skeleton record. Beatrice Koker controverted, and fought for her right to trial against power.

Cases Believed To Sustain Jurisdiction
(Wittlin v Giacalone)

C. 55 (a)

95 Misc 2d 233, a client brought legal malpractice against an attorney who had represented him in a personal injury action.

The attorney filed motion for summary judgment, client cross-moved. The summary judgment denied. Whether lawyer's conduct constituted malpractice is question of fact.

Set forth

In case at bar the Superior Court Judge denied summary judgment to legal malpractice, and the Court of Appeals Div I reversed it improperly. Joint tortfeasors were divided on 3/4 of the case, and all other contrary to law, fact, evidence and rule, but the one part of the case properly ruled is then overturned on appeal with affirmance on the granted summary judgment, thus sweeping the entire "hot potato case" under the legal rug, so to speak. The lawyers conduct in the case at bar is a question of fact and ignored.

HONEYMAN V HANAN, EXECUTOR 271 NY 564,

3. NE 2d 186 (1937) Judgment vacated.

To constitute jurisdiction over an appeal from a state court, it must appear, affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause. Whether this requirement has been met is itself a federal question.

Denial of a right to trial in the case at bar, intercepted with granting summary judgment to all defendants to 3/4 of the case, is a record of a federal question.

The case at bar could not be decided without ruling on the federal question of denial of a trial fully and fairly heard in a meaningful manner. State Courts ruled sub silencio, evading and avoiding.

Cases believed To Sustain Jurisdiction
(Honeyman v Hanan, Executor) C-57

CONSPIRACY ET AL

In the authority of COLLINS V HARDYMAN
183 F 2d 308 (1950), a conspiracy by private
individuals not acting under color of state
law, may be of such magnitude and effect as
to work deprivation of equal protection of
laws, equal privileges and immunities. This
case applies to all defendants in case at bar.
Complaint Cause II Untruths #1 #2 #3 #4
Paragraph 2.3 Through Paragraph 2.58:

Wrongful use of the judicial system
by the defendants in the King County Superior
Court, as quasi-judicial members of the court,
interefered with my fourteenth amendment
rights under 42 USCA §1985--(2)(3): In
TAYLOR V GILMARTIN 686 F 2d 1346 (1982)
10th Cir), an adult plaintiff sued religious
deprogrammers under Civil Rights Act and at
common law. The District Court granted
summary judgment for the defendants and the
plaintiff appealed and won a new trial to
jury under 28 USCA §1985(2)(3): Set Forth

Page: _____

SUMMARY JUDGMENT

TAYLOR V GILMARTIN (Supra)

Conspiracy: Amendment 14 §5:

There was a separate concurrence of Justice Clark, joined by Black and Fortas, which stated: Page 1359: p 1362:

"The Court carves out of its opinion the question of the power of Congress, under §5 of the Fourteenth amendment, to enact legislation implementing the equal Protection Clause or any other provision of the Fourteenth Amendment.... There now can be no doubt that the specific language of §5 empowers the Congress to enact laws punishing all conspiracies--with or without state action--that interfere with fourteen-the amendment rights."

Judgment on the claims in this cited case under §1985 (2)(3) are reversed as to all defendants. The case shall be remanded for further proceedings, a new trial to a jury, in accordance with the foregoing."

Cases Believed To Sustain Jurisdiction
(Taylor v Gilmartin)

C-58(a)

CIVIL RIGHTS
PRIVATE CONSPIRACIES

In GRIFFIN V BRECKENRIDGE 410 F 2d 817 (1969), negro people were attacked, then threatened with murder, clubbed and inflicted with serious physical injury. The Federal District Court dismissed the complaint for failure to state a cause of action. The Plaintiffs appealed.

On appeal to the 5th Circuit, it was decided 42 USCA §1985(3) was not applicable to reach private conspiracies to interfere with 14th Amendment rights. Affirmed.

On certiorari, the United States Supreme Court REVERSED and remanded the case. It was the unanimous view of the highest court of the land that 42 USCA §1985(3) is intended to reach private conspiracies. GRIFFIN V BRECKENRIDGE 403 US 88, 102, 91 S Ct 1790, 1798, 29 L Ed 2d 338 (1971): Set Forth

"STATE ACTION"

ARTICLE III CONSTITUTION OF THE UNITED STATES

§1 Note 121 p 12:

"Policy of federal courts is to decide cases on basis of substantial rights rather than technicalities." Hines v Wainwright, (C. A. Fla 1976) 539 F 2d 433:

CONSTITUTION OF THE UNITED STATES

AMENDMENT 14 Citizens Of United States

Note 20 p 59

"Judicial action in private disputes is a form of state action required for application of this clause prohibiting state from abridging the privileges and immunities of citizens." Hosey v Club Van Cortlandt 299 F Supp (1969) D.C.N.Y. Appeal: 28 USCA 1257(3):

CASES BELIEVED TO SUSTAIN JURISDICTION OF
THE UNITED STATES SUPREME COURT

Constitutional And Statutory Provisions

C-59.(a)

ARTICLE III CONSTITUTION OF THE UNITED
STATES §2, Cl. 1, Note 17 p 76:

"United States Supreme Court must
take notice on its own motion where
jurisdiction does not appear."

Butler v Dexter, Tx 1976, 96 S Ct
1527, 425 U.S. 262, 47 L Ed 2d 774:

"This amendment governs any action
of a state whether through its legis-
lature, through its courts, or
through its executive or adminis-
trative officers." Voight v Webb
D. C. Wash (1942)

CONSTITUTION OF THE UNITED STATES
AMENDMENT 14

Procedural due process is opportunity
to be heard at a meaningful time
and in a meaningful manner.

Parkham v Cortese 407 U.S. 67,
32 L Ed 2d 556, 34 L Ed 2d 165:

Cases Believed To Sustain Jurisdiction Of
The United States Supreme Court

C-59
(8)

Jurisdiction

28 USC §1257: (2)(3)

§ 1257. State courts; appeal; certiorari

"Final judgments or decrees rendered
by the highest court of the State
in which a decision could be had,
may be reviewed by the Supreme
Court as follows:

(1) By appeal, where is drawn in question
the validity of a treaty or statute of the
United States and the decision is against
its validity.

(2) By appeal, where is drawn in question
the validity of a statute of any state on
the ground of its being repugnant to the
Constitution, treaties or laws of the United
States, and the decision is in favor of its
validity.

(3) By writ of certiorari, where the valid-
ity of a treaty or statute of the United
States is drawn in question or where the

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§1257

C-60

validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."

28 USCS §1257. n 99

Decision based on nonfederal grounds

"Where state court decided against plaintiff in error on federal questions, Supreme Court would hear case on its merits, although the state court's decision was based on a ground involving no federal question." Railroad Co V Maryland (1875) 87 US 643, 22 L Ed 446:

"Language used by highest state court in its opinion is not conclusive upon question whether decree is maintain-

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§1257

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Note 99:

able on some independent non-Federal ground; real substance and effect of decision will be inquired into and determined." McCullough v Virginia (1898) 172 US 102, 43 L Ed 382, 19 S Ct 134:

"Where state court decided against plaintiff in error on federal question, Supreme Court would hear case on its merits, although the state court's decision was based on a ground involving no federal question." Railroad Co v Maryland (1975) 87 US 643, 22 L Ed 446: (Supra)

28 USCS §1257. Note 97:

Decision not made in terms of federal question

"Where state court did not, in terms, pass up claim distinctly made there, that statutes of state under which proceedings were had were in derogation of rights and privileges secured to appellant by Constitution of United

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§1257

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Note 97:

States, but final judgment of that court necessarily involved adjudication of that claim, Federal Supreme Court has jurisdiction to review case." Chicago Life Ins Co v Needles (1885) 113 US 574, 28 L Ed 1084, 5 S Ct 681:

"Decision in terms of Federal question is not essential; if decision of Federal question was necessarily involved in judgment rendered, it is not matter of importance that state court avoided all reference to question."

Chapman v Goodnow's Admr (1887) 123 US 540, 31 L Ed 235, 8 S Ct 211: Bell's G. R. Co v Pennsylvania (1890) 134 US 232, 33 L Ed 892, 10 S Ct 533: Chicago B & Q R. CO v Chicago (1897) 166 US 226, 41 L Ed 979, 17 S Ct 581:

"Where it appears from record, by clear and necessary intendment, that

Note 99:

Federal question was directly involved so that state court could not have given judgment without deciding it, Supreme Court has appellate jurisdiction." Sayward v Denny (1895) 158 US 180, 39 L Ed 941, 15 S Ct 777:

28 USCA §1257 Note 74:

Separability of questions

"Of course, there might be cases where, although the decision put forward other reasons, it would be apparent that a federal question was involved, whether mentioned or not. It may be imagined, for the sake of argument, that it might appear that a state court, even if ostensibly deciding the federal question in favor of the plaintiff in error, really must have been against him upon it, and was seeking to evade the jurisdiction of this court.

Note 74: USCA:

If the ground of decision did not appear and that which did not involve a federal question was so palpably unfounded that it could not be presumed to have been entertained, it may be that this court would take jurisdiction." Johnson v Risk, Tenn 1890 11 S Ct 111, 137 US 300, 307, 34 L Ed 683." Leathe v Thomas, Ill 1907, 28 S ct 30, 207 U.S. 93, 52 L Ed 118.

28 USCA §1257 Note 61:

Necessity of federal question

"The Supreme Court has no jurisdiction to review a state court decision unless it appears affirmatively from the record not only that a federal question was presented for decision to highest court of state having jurisdiction, but that its decision of federal question was

Note 61: USCA:

necessary to determination of the cause, that federal question was actually decided, or that judgment was rendered could not have been given without deciding it."

Southwestern Bell Telephone co v Oklahoma, Okl 1938, 58 S Ct 528, 303 U.S. 206, 82 L Ed 751. See, also, People of State of New York ex rel Consolidated Water Co. of Utica v Maltbie, N. Y. 1938, 58 S Ct 506, 303 U. S. 158, 82 L Ed 724.

28 USCA §1257 Note 99:

Procedural questions

"A state may choose the procedure it deems appropriate for the vindication of federal rights, but where state court of last resort closes the door to any consideration of a claim of a federal right, it is not simply a question of state procedure." Young v

Note 99 USCA:

Ragen, Ill 1949, 69 S Ct 1073, 337

U. S. 235, 93 L Ed 1333:

28 USCA §70

Fictitious or frivolous
questions---Generally

"The court acts only on the judgment,
and only such questions as either
have been or ought to have been
passed on by the state court in the
regular course of its proceedings
can be considered." Fashmacht v
Frank, La 1874, 90 US 416, 23 Wall
416, 23 L Ed 81.

"A motion to dismiss a writ of error
on the ground that no federal question
is involved must be denied where the
protection of the U.S.C.A. Const.

Amend 14 is invoked in the answer, and
the defense is at least plausible on
its face." American Sugar-Refining Co
v State of Louisiana, La. 1900,

Note 70: USCA:

21 S. Ct 43, 179 U.S. 89, 45 L Ed 102:

28 USCA §1257 Note 103:

Pleadings

"Whether a pleading sets us a sufficient right of action or defense, grounded on Constitution or a law of the United States, is necessarily a question of federal law, and, where a case coming from a state court presents that question, United States Supreme Court must determine for itself sufficiency of allegations displaying right or defense, and it is not concluded by view taken of them by state court." Allied Stores of Ohio, Inc. v Bowers, Ohio 1959,
70 S Ct 437, 358 U.S. 522, 3 L Ed 480:

28 USCA §1257 Note 403:
Denial of federal rights

"In reviewing a case in which federal
constitutional rights are asserted,

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United States Supreme Court must inquire not merely whether those rights have been denied in express terms but also whether they have been denied in substance and effect, and must review independently both legal issues and those factual matters with which they are comingled." Oyama v State of Cal., Cal 1948, 68 S Ct 269, 332 U.S. 633, 92 L Ed 249:

HISTORICAL AND REVISION NOTES

"The revised section applies in both civil and criminal cases. In Twitchell v Philadelphia, 1868, 7 Wall, 321, 19 L Ed 223, it was expressly held that the provisions of section 25 of the Judiciary Act of 1789, 1 Stat. 85, on which Title 28 U.S.C., 1940 ed., section 344, is based, applied to criminal cases, - -."

42 U.S.C.A. §1985 (2)(3): CIVIL RIGHTS

Conspiracy to interfere with Civil Rights

Obstructing justice; intimidating party, witness, or juror

(2) "If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror;

or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights
or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the

of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby

another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators." R.S. §1980.

The complaint of the instant case shows the impeding, hindering, obstructing, defeating the due course of justice. What the two defendants did can only be intentional because repetition of untruth is not accidental.

The superior position of attorneys, especially the calibre of the defendants is also a factor by law.

Grievous harm and deprivation and damages resulted from the acts, omissions and legal wrongs from defendants in case at bar.

Constitutional And Statutory Provisions

42 USCA §1985 (2)(3)

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"Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if

the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued." R.S. §1981.

The defense attorney in the trial of 1976 is untruthful to judge and jury and the attorney for the plaintiff remained silent when there was a duty to speak having knowledge the wrong was being committed and having the power to prevent and

neglected or refused to do so in conspiracy withholding and suppressing and misrepresenting material facts to injuries to the jury in two untruths and tactics of delay in two other untruths. Plus other.

42 USCA §1983: CIVIL RIGHTS

Civil action for
deprivation of rights

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."
R.S. §1979; Pub L 96-170, §1, Dec 29, 1979, 93 Stat 1284:

Constitutional And Statutory Provisions §1983

C-69

Note 39 p 34

Extreme Nature Of Rule

"Summary judgment is lethal weapon and courts must be mindful of its aims and targets and beware of overkill in its use." Brunswick Corp v Vineberg C.A. Fla 1967, 370 F 2d 605:

"Summary judgment remedy is extreme and not to be used as a substitute for trial, and any doubt as to existence of triable issue of material fact must be resolved against movant." Jacobson v Maryland Cas Co., C.A. Mo 1964, 336 F 2d 72, certiorari denied 85 S Ct 655, 379 U.S. 964, 13 L Ed 2d 558. See also Smoot v Chicago, R. I & P.R. Co., C.A. Okl 1967, 378 F 2d 879:

Constitutional And Statutory Provisions

28 USCA - RULE 56 Summary Judgment C-70

C.F.W. Const. Co V Travelers Ins. Co
C.A. Tenn, 1966, 363 F 2d 557:
Thompson v U. S., C.A. Kan. 1961,
291 F 2d 67: Bruce Const. Corp v
U.S. for Use of Westinghouse Elec.
Supply Co., C.A. Fla., 1957, 242 F 2d
873: Homan Mfg. Co v Long, C.A. ILL,
1957, 242 F 2d 645:

Note 42 p 35: Cautious, Limited Or
Sparing Application Of Rule

"Summary judgment must be used
sparingly since its prophylactic
function, when exercised, cuts off
a party's right to present its case
to the jury." Egelston v State
University College at Geneseo,
C.A.N.Y. 1976, 535 F 2d 752:

"Availability of relief under this
rule is limited." Klinge v Lutheran
Charities Ass'n of St. Louis, C.A.
Mo. 1975, 523 F 2d 56:

Constitutional And Statutory Provisions
28 USCA - RULE 56 Summary Judgment

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Note 42 p 35:

"Summary judgment should be applied with caution." International Ass'n of Machinists and Aerospace Workers, Dist No 8, AFL-CIO V J. L. Clark Co., C.A. Ill. 1972, 471 F 2d 694:

"Summary judgment is to be granted cautiously in order to preserve substantive rights, nevertheless, it is entirely proper where, after following proper procedures, no genuine issue of material fact remains." Exxon Corp. v National Foodline Corp., Cust & Pat. App 1978, 579 F 2d 1244:

28 USCA - RULE 56:

Note 44 p 36:

Discretion Of Court

"Court must be certain that it is not depriving party of fundamental right to trial before granting summary

Constitutional And Statutory Provision
28 USCA - Rule 56 Summary Judgment

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Note 44 p 36:

judgment." Johnson Foils, Inc. v
v Huyck Corp., D.C.N.Y. 1973,
61 F.R.D. 405:

"To avoid violation of constitutional
guarantee of trial by jury, summary
judgment cannot be granted if there
is any doubt as to the existence of
genuine issue of fact." Elliott v
Elliott, D.C.N.Y. 1970, 49 F.R.D. 283:

"Discretion plays no real role in
grant of summary judgment, and
exercise of sound discretion applies
only in denying summary judgment in
appropriate circumstances." Turner
V McWhirter Material Handling Co.,
D.C. Ga, 1964, 35 F.R.D. 560:

28 USCA - RULE 56: Note 219 p 83:

Number Of Material Facts

"Existence of one genuine issue of
material fact is sufficient to preclude

Constitutional And Statutory Provision
28 USCA - RULE 56 Summary judgment

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summary judgment." No Oilport! v
Carter, D.C. Wash. 1981, 520 F
Supp 334;

28 USCA - RULE 56: Note 482 p 145:
Failure Of Moving Party's Proof

"If nonmoving party has raised by
pleadings a genuine issue of
material fact, and evidentiary
matter in support of motion for
summary judgment does not estab-
lish absence of such issue,
summary judgment must be denied
even though no opposing evidentiary
matter is presented." McWhirter
Distributing Co., Inc v Texaco, Inc
Em. App 1981, 668 F 2d 511;

"Where party moving for summary judg-
ment does not show, on basis of ad-
missible evidence adduced from persons
with personal knowledge of facts, that

there is no genuine issue as to any material fact, summary judgment will be denied, even though party opposing motion has submitted no probative evidence to support its position or to establish that there is genuine issue for trial; however, if moving party does carry its preliminary burden, then opposing party may not defeat motion by relying on contentions in its pleading, but must produce significant probative evidence to support its position." U.S. v Pent-R-Books, Inc., C.A.N.Y. 1976 538 F 2d 519, certiorari denied 97 S Ct 1175, 430 U.S. 906, 51 L ed 2d 582:

Amendment V. Due Process Of Law
* * * nor be deprived of life,
liberty, or property, without
due process of law; * * *

CONSTITUTION - AMENDMENT 5

DUE PROCESS OF LAW

Note 12: Nature Of Due Process

"Due process, to be effective, must be accorded at meaningful time and in meaningful manner." Royal Typewriter Co. v N.L.R.H., C.A.S. 1976, 533 F 2d 1030;

"Due process procedures required by this amendment vary with nature of case and the more serious the deprivation, the more extensive the procedural safeguards which must precede its imposition." Saville v Treadway D.C. Tenn. 1974, 404 F Supp 430:

Note 14: Fair Play:

"Fair play is the essence of "due process." Galvan v Press, Cal 1954, 74 S Ct 737, 347 U.S. 522, 98 L Ed 911, rehearing denied 75 S Ct 17, 348 U.S. 852, 99 L Ed 671. See, also, Garvey v Freeman, C.A. Colo. 1968, 397 F 2d 600: Cox v Burke, C.A. Wis. 1966, 361 F 2d 183, certiorari denied, 87 S Ct 304, 385 US 939, 17 L Ed 2d 218: U.S. ex rel Mishkin v Thomas, D.C.N.Y. 1968, 282 F Supp 729: U.S. v American Honda Motor Co., D.C. Ill 1967, 273 F Supp 810:

"Due process is denied where the procedure tends to shock the sense of fair play." Howard v U.S. C.A. Cal. 1967, 372 F 2d 294, certiorari denied 87 S Ct 2129, 388 U.S. 915, 18 L Ed 2d 1356:

Note 13: Elements Of Due Process -
Generally:

"Fundamental requirement of due process is opportunity to be heard at meaningful time and in meaningful manner." Mathews v Eldridge, Va 1976, 96 S Ct 893, 424 U.S. 319, 47 L Ed 2d 18:

"Due process is not technical concept with fixed content unrelated to the place and circumstances; rather, it is flexible and calls for such procedural protections as particular situation demands." Id.

Note 25:

"Due process of law" means the law of the land, which implies a general public law, equally binding upon every member of the community, which embraces all persons who are in, or who may come into, like situations

and circumstances, and not partial laws affecting rights of classes of individuals, and when applied to special or class legislation, it means in addition that classification must be natural and reasonable."

U.S. v Ballard, D.C. Ky 1935,
12 F Supp 321:

"Due process of law" and "law of the land" are substantially identical."

Yarborough v North Carolina Park Commission, 1928, 145 S.E. 563,
196 N.C. 284:

Note 40: Vested Rights Protected -
Generally:

"One may not be deprived of his day in court under a given statute because of the failure of Congress to specifically provide it, since such a right is fundamental."

Collins v Biron, D.C. Ala., 1944,
56 F Supp 357:

Note 424: Suppression:

"Prosecution's suppression, concealment, or failure to disclose evidence it has discovered which is useful to defense constitutes denial of due process of law."

U.S. V Wolfson, D.C. Del 1971,
322 F. Supp 798:

Note 11: "Liberty, Definition Of"

"The term "liberty" within this amendment is not confined to mere freedom from bodily restraint, but it extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective."

Bolling v Sharpe App. D.C. 1954,
74 S Ct 693, 347 U.S. 497, 98 L Ed
1083:

CONSTITUTION

AMENDMENT VII - CIVIL TRIALS

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

CONSTITUTION OF THE UNITED STATES - 1787

PREAMBLE

"We the people of the United States in order to form a more perfect Union, establish justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the

United States of America."

"Were adherence to letter without
reference to spirit and purpose
of Constitution may mislead."

Packer Co iv Keokuk (1877) 95 U.S.

80, 24 L ed 377:

CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV

Sec.

1. Citizens of United States; states prohibited from abridging privileges or immunities of citizens of the United States, or depriving any person of due process of law or equal protection of the laws.
 2. Apportionment of representatives.
 3. Disqualification as officers or electors of persons who have engaged in insurrection or rebellion; removal of disability.
-

Constitutional And Statutory Provisions
CONSTITUTION AMENDMENT XIV

C-78

AMENDMENT XIV:

4. Validity of public debt; debts for payment of pensions or bounties in suppressing insurrection; payment of obligations incurred in aid of insurrection or claims for emancipation of slaves.
5. Legislation for enforcement of article.

Note 118: Substantive Nature Of Due Process

"Due process of law concerns itself with substance and not form." Lane v N. L. R. B., C.A. 10 1951, 180 F 2d 671, certiorari denied 72 S Ct 26, 342 U.S. 813, 96 L Ed 614:

Note 102:

"Due process of law" means procedure according to rules and principles for enforcement and protection of private rights." Gray v Hall, 1928

Constitutional And Statutory Provisions

CONSTITUTION AMENDMENT XIV

C-78 (a)

Note 187: Professional Or Trade
Associations

"Termination of membership in private association organized to maintain standards in a profession or calling does not present question under this clause." Parsons College v North Central Ass'n of Colleges And Secondary Schools, D.C. Ill, 1967, 271 F Supp 65:

"Where "state action" was involved because of dental society's official function of selecting nominees for vacancies on state board of dental examiners and loss of benefits of membership in district dental society would deprive dentist of substantial rights, dentist had standing to challenge division of dental society code of ethics requiring submission of speeches and articles for approval prior to

publication." Firestone v First
Dist. Dental Soc., 1969, 299 N.Y.S.
2d 551, 59 Mis 2d 362:

Note 187:

"Where state dental society functioned as agent of state in selection of members of state board of dental examiners and board of dental examiners was creature of the state, the activities of the dental society constituted "state action." Id.

Note 30: Civil Rights Act:

"Only where asserted civil right stems from this amendment and claim is for damages resulting from abridgment of privileges or immunities or denial of equal protection of laws is federal remedy denied against persons not acting under color of state law." Paynes v Lee, 377 F 2d 61:

Constitutional And Statutory Provisions
CONSTITUTION AMENDMENT XIV

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CONSTITUTION OF THE STATE OF WASHINGTON

ART. 4, §2: p 335-336:

"Under 28 USC §1257, restricting United States Supreme Court's review of state decisions to judgments rendered "by the highest court of a state in which a decision could be had," judgment rendered by Department One of Supreme Court of Washington is reviewable in United States Supreme Court, where rehearing en banc before Washington Supreme Court is not granted as matter of right, Washington Constitution and Statutes authorize its supreme court to sit in two Departments, each of which is empowered to hear and determine causes on all questions arising therein, cases coming before court may be assigned to Department or to court en banc at discretion of Chief Justice and specified number of

Constitutional And Statutory Provisions
CONSTITUTION OF THE STATE OF WASHINGTON

C-80 (a)

other members of the court, and decision of Department becomes final judgment of Washington Supreme Court unless within specified time petition for hearing has been filed or rehearing has been ordered on court's own initiative."

Local 174, Teamsters, Chauffeurs,
Warehousemen & Helpers v Lucas
Flour Co. (1962) 360 US 95, 7 L Ed
2d 593, 82 S Ct 571:

CONSTITUTION OF WASHINGTON Trial by Jury:
DECLARATION OF RIGHTS ART.1, §21:

"The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for verdict by nine or more jurors in civil cases in any court of record, and for waiving of jury in civil cases where the consent

Constitutional And Statutory Provisions
CONSTITUTION OF THE STATE OF WASHINGTON

of the parties interested is given thereto."

"Right to trial by jury is carefully protected by constitution and laws and must be guarded by courts."

Gatudy v Acme Constr. Co (1938)

196 Wn 562, 83 P 2d 889;

CONSTITUTION OF THE STATE OF WASHINGTON
ART. 1, §3

4. What Constitutes Due Process Of Law

"Specific procedural safeguards to be afforded under due process protections are determined by the purpose of the hearing involved."

State v Scheffel (1973) 82 Wn 2d 872, 514 P 2d 1052;

"A full due process hearing must provide an individual with the opportunity to confront witnesses, to present evidence and oral argument, and to be represented by

Constitutional And Statutory Provisions
CONSTITUTION OF THE STATE OF WASHINGTON

counsel." Flory v Department of
Motor Vehicles (1974) 84 Wn 2d
568, 527 P 2d 1318:

Art. 1, §3 Note 25:
Civil Proceedings --
In General

"A judgment entered without valid
personal jurisdiction over defend-
ant violates due process." Schell v
Tri-State Irrigation (1979) 22 Wn
App 788, 591 P 2d 1222:

Note 36:

"Fair trial consists not alone in
observation of naked forms of law,
but in recognition and just appli-
cation of its principles." State v
Suleski (1965) 67 W D 2d 45, 406
P 2d 613:

Art. 1, §32: Fundamental Principles

"A frequent recurrence to fundament-
al principles is essential to the

Constitutional And Statutory Provisions
CONSTITUTION OF THE STATE OF WASHINGTON

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security of individual right and
the perpetuity of free government."

STATE BAR ACT
CHAPTER 2.48
AGENCY OF STATE

2.48.230 Code of ethics.

"The code of ethics of the American Bar Association shall be the standard of ethics for members of the bar of this state."

2.48.010 Objects And Powers

"There is hereby created as an agency of the state, for the purpose and with the powers hereinafter set forth, an association to be known as the Washington State Bar Association, hereinafter designated as the state bar, which association shall have a common seal and may sue and be sued, and which may, for the

State Bar Act
2.48.010

purpose of carrying into effect and promoting the objects of said association, enter into contracts and acquire, hold, encumber and dispose of such real and personal property as is necessary thereto.

Short title: "This act may be known as the State Bar Act." (1933 c94 §1.)

2.48.160 Suspension for nonpayment of fees

"Any member failing to pay any fees after the same become due, and after two months' written notice of his delinquency, must be suspended from membership in the state bar, but may be reinstated upon payment of accrued fees and such penalties as may be imposed by the board of governors, not exceeding double the amount of the delinquent fee."

State ex rel Schwab v State Bar Assoc

(1972) 80 Wn 2d 266, 493 P 2d 1237:

Constitutional And Statutory Provisions
STATE BAR ACT RCW 2.48

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80 Wn 2d 266, 493 P 2d 1237:

SUPREME COURT OF THE UNITED STATES

No. A-734

BEATRICE E. KOKER,

Appellant,

V

FREDERICK V BETTS, ET AL

ORDER

UPON CONSIDERATION of the application of the appellant,

IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby, extended to and including May 6, 1983.

/S/ William H. Rehnquist
Associate Justice of the
Supreme Court of the United
States

Dated this 8th
day of March, 1983.

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PUBLIC DISCLOSURE

RCW 42.17.260 (2)(a)

WASHINGTON STATE

(2) "Each agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973."

(a) "Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases."

"Any enactment, from whatever source originating, to which a State gives the force of law is a statute of the State, within the meaning of the clause cited related to the Jurisdiction of this court." Williams v Bruffy 96 U.S. 594, 603, 24 L Ed 1018; Hamilton v Regents of Univ Of Calif 293 U.S. 245, 257, 258, 55 S Ct 197, 79 L Ed 343:

Public Disclosure - Denial Of Right

C-84 (a)

CERTIFICATE OF SERVICE

I, Beatrice E. Koker, Petitioner, hereby
do certify that I made personal service
of 3 copies (three) each of the petition
and Appendix A, Appendix B, Appendix C,
on May 2, 1983. AFFIDAVIT OF SERVICE
RULE 28 SENT CERTIFIED EXPRESS MAIL TO
THE UNITED STATES SUPREME COURT ON MAY 2,
1983.

Beatrice E. Koker
Pro Se

Personal Service To:

BETTS, PATTERSON & MINES LAW FIRM
Ingrid W. Hansen, Attorney of Record - Def #1
900 Fourth Avenue- Bank of Calif Bldg
Seattle, Washington 98164
(206) 292-9988

Personal Service To:

HELSELL, FETTERMAN, MARTIN, TODD,
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Seattle, Wn. 98133

JUN 29 1947

ALEXANDER L. STEVAS,
CLERK

NO. 82-1947

IN THE
Supreme Court of the United States

ERICH KOKER and BEATRICE KOKER,

Appellants,

vs.

FREDERICK V. BETTS and JANE DOE
BETTS, his wife, and their marital
community, and SKEEL, MCKELVY, HENKE,
EVENSON & BETTS, Law Firm of Frederick
V. Betts,

Appellees No. 1,

and

KENNETH L. LeMASTER and JANE DOE
LeMASTER, his wife, and their marital
community, and SAFECO INSURANCE
COMPANY OF AMERICA, and GENERAL
INSURANCE COMPANY OF AMERICA, and
FIRST NATIONAL INSURANCE COMPANY OF
AMERICA,

Appellees No. 2.

MOTION TO DISMISS OR AFFIRM

INGRID W. HANSEN
BETTS, PATTERSON & MINES, P.S.

900 Fourth Avenue
Seattle, Washington 98164
(206) 292-9988

PREFACE

Appellants Erich and Beatrice Koker have filed a notice of appeal in the Supreme Court of the State of Washington. The notice does not meet the jurisdictional requirements for appeal of U.S.C. § 1257(1) or (2). This motion is pursuant to U.S.C. 28 § 2103.

QUESTIONS PRESENTED FOR REVIEW

No question is presented for review by the United States Supreme Court as there is no matter within the confines of U.S.C. § 1257 presented by this case.

PARTIES TO THE PROCEEDING

All parties are listed in the caption of the case.

REPORTS OF OPINIONS

No reports of any opinions were published. The filed opinion of the Court of Appeals, Division I of the State of Washington dated July 6, 1982 is in the Appendix. A motion for reconsideration was denied August 5, 1982, and petition for review by the Washington State Supreme Court was denied

November 5, 1982. A motion for reconsideration was denied January 7, 1983.

STATEMENT OF THE CASE

No federal question was involved at any stage the proceedings below. The case arises from Ms. Koker's dissatisfaction with the result in a 1976 personal injury action seeking damages for injuries she sustained in a 1971 automobile accident. F. V. Betts, then of Skeel, McKelvy, Henke, Evenson & Betts, represented Ms. Koker at trial. Ms. Koker then brought this action alleging legal malpractice, conspiracy, misrepresentation, fraud, deceit and outrage. The trial court dismissed the complaint as to all issues but legal malpractice. On appeal to the Court of Appeals, the dismissals were affirmed, and in addition the legal malpractice claim was ordered dismissed as the evidence presented by Ms. Koker on the motion for summary judgment was insufficient to raise an issue of material fact concerning alleged malpractice.

Ms. Koker's attempts to have further review beyond the Washington State Court of Appeals were denied. The Court of Appeals denied rehearing, and

the State Supreme Court refused to accept review. Ms. Koker now apparently claims that this appellate process denied her certain constitutional rights.

Ms. Koker's claims are completely devoid of merit. Her case was determined on a motion for summary judgment and reviewed by the appellate court in the State of Washington. No issue of the type necessary for jurisdiction in the Washington State Supreme Court was raised. The findings of the appellate courts in the State of Washington that this case does not merit further consideration do not constitute any denial of due process or other constitutional right.

CONCLUSION

Appellees urge this Court to dismiss the Kokers' jurisdictional statement or refuse jurisdiction.

Respectfully submitted,

BETTS, PATTERSON & MINES, P.S.

By

Ingrid W. Hansen
Attorneys for Appellees No. 1

APPENDIX

IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON

ERICK KOKER and BEATRICE)	
E. KOKER, husband and wife,)	
Appellants,)	
	)	No. 9346-1-I
v.)	
)	
FREDERICK V. BETTS and JANE)	
DOE BETTS, his wife, and)	
their marital community, and	)	DIVISION ONE
SKEEL, McKELVY, HENKE, EVAN-)	
SON & BETTS, Law Firm of)	
FREDERICK V. BETTS,)	
Respondents,)	
)	
and)	
)	
KENNETH L. LeMASTER and JANE)	
DOE LeMASTER, his wife, and)	
their marital community, and)	
SAFECO INSURANCE COMPANY OF)	
AMERICA, and GENERAL INSUR-)	
ANCE COMPANY OF AMERICA, and)	
FIRST NATIONAL INSURANCE	)	FILED
COMPANY OF AMERICA,	)	JUL 6 1982
)	
Defendants.)	

PER CURIAM.--Plaintiff Beatrice E. Koker appeals from a summary judgment dismissing her complaint for 1) conspiracy, 2) misrepresentation, fraud, deceit, and 3) outrage. Defendant, Frederick V. Betts,

cross-appeals from a denial of his motion for summary judgment on the claim of legal malpractice.

FACTS

Beatrice Koker and her husband, now deceased, brought a personal injury action in 1976, Koker v. Sage, King County Cause No. 77360, seeking damages for injuries she sustained in a 1971 automobile accident. Liability was admitted and the jury returned a verdict of \$4,600 in favor of Koker. She was represented at trial by Betts.

Koker, acting pro se, appealed the judgment, which was subsequently affirmed by this court in an unpublished opinion. Koker v. Sage, Court of Appeals, Division I, No. 4916-I, petition for review denied 91 Wn.2d 1014 (1979).

Koker commenced this action against Betts alleging 1) legal malpractice, 2) conspiracy, 3) misrepresentation,

fraud and deceit, and 4) outrage. The trial court determined that there existed no material issue of fact and granted summary judgment in favor of Betts on all claims except legal malpractice.

CONSPIRACY

Initially, Koker argues that Betts and Kenneth L. LeMaster, attorney for the Sages, conspired to deprive her of a fair trial in Koker v. Sage, supra.

Koker presented many assertions of an alleged agreement between Betts and LeMaster to create a conspiracy; however, after a careful review of such claims we conclude that such assertions, even if true, do not constitute conspiracy.

In Washington, actionable civil conspiracy exists if two or more persons have by agreement combined to accomplish an unlawful purpose. Corbit v. J.I. Case Co., 70 Wn.2d 522, 528-29, 424 P.2d 290 (1967);

Allard v. Board of Regents, 25 Wn. App. 243, 247, 606 P.2d 280 (1980). The evidence is sufficient only if the facts and circumstances relied upon to establish the conspiracy are inconsistent with a lawful or honest purpose and reasonably consistent only with the existence of the conspiracy. Baun v. Lumber & Sawmill Workers Local 2740, 46 Wn.2d 645, 656, 284 P.2d 275 (1955); O'Brien v. Larson, 11 Wn. App. 52, 56, 521 P.2d 228 (1974). This evidence must be clear, cogent, and convincing. Corbit v. J.I. Case Co., supra at 529; O'Brien v. Larson, supra at 55.

A motion for summary judgment will be granted only if, after viewing all the pleadings, affidavits, depositions, admissions and all reasonable inferences therefrom in favor of the nonmoving party, it can be said (1) that there is no genuine issue of material fact, (2) that reasonable

persons could reach only one conclusion, and (3) that the moving party is entitled to judgment as a matter of law. Peterick v. State, 22 Wn. App. 163, 180-81, 589 P.2d 250 (1977). To avoid summary judgment, the nonmoving party may not rely solely on speculation and argumentative assertions. Upon the submission by the moving party of adequate affidavits, the nonmoving party must set forth specific facts to rebut the moving party's contentions and show a genuine issue of material fact. Allard v. Board of Regents, supra at 247; Peterick v. State, supra at 181.

Koker alleges that various actions and statements by the two attorneys during and after trial constituted a conspiracy to deprive her of a fair trial.

From an examination of the record, it appears that all of these statements and events are consistent with a lawful purpose and not reasonably consistent with the

existence of a conspiracy. There is no evidence of an "agreement." There are no written communications or contracts, or conversations which would create even a suspicion of a conspiracy. Further, it appears that Betts had a contingent fee arrangement with Koker which is inconsistent with the existence of a conspiracy. Since there is no evidence of an agreement, a conspiracy cannot be established as a matter of law. Corbit v. J. I. Case Co., supra. The trial court did not err in granting summary judgment as a matter of law on this issue.

MISREPRESENTATION, FRAUD & DECEIT

Next, Koker alleges that Betts committed misrepresentation, fraud and deceit by failing to disclose to the trial court that various statements made by LeMaster were untrue.

In Washington in order to recover in a cause of action for fraud the following elements must be established:

(1) A representation of an existing fact; (2) its materiality; (3) its falsity; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) his intent that it should be acted on by the person to whom it is made; (6) ignorance of its falsity on the part of the person to whom it is made; (7) the latter's reliance on the truth of the representation; (8) his right to rely upon it; (9) his consequent damage.

Sigman v. Steven-Norton, Inc., 70 Wn.2d 915, 920, 425 P.2d 891 (1967); Martin v. Miller, 24 Wn. App. 306, 308, 600 P.2d 698 (1979). Because they are so easy to assert, fraud and deceit must be established by clear, cogent and convincing evidence. House v. Thornton, 76 Wn.2d 428, 433, 457 P.2d 199 (1969).

Whether a misrepresentation was made with intent to deceive is a question of fact. Wilburn v. Pioneer Mutual Life Insur. Co., 8 Wn. App. 616, 620, 508 P.2d

632 (1973). However, if all the facts and circumstances are consistent with an honest intent, fraud is not proved. Marrazzo v. Orino, 194 Wash. 364, 377, 78 P.2d 181 (1938).

From an examination of the record, Koker has not presented any evidence of LeMaster's intent to misrepresent, deceive or commit a fraud on either Koker or her counsel.

OUTRAGE

Next, Koker argues that the trial court erred when it held as a matter of law that Bett's conduct was not so extreme and outrageous as to permit recovery under the tort of outrage.

In order to recover under this theory the following elements must be established; (1) emotional distress must have been inflicted intentionally or recklessly (mere negligence is not enough); (2) the conduct of the defendant must have been outrageous

and extreme; (3) the conduct must have caused severe emotional distress to the plaintiff. Grimsby v. Samson, 85 Wn.2d 52, 59, 530 P.2d 291 (1975).

Recovery for outrage can only be had if the conduct has been "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Grimsby v. Samson, surpa at 59; Restatement (Second) of Torts § 46, comment d (1965).

Whether conduct was extreme and outrageous is for the court to determine; if reasonable people might differ, then the question is for the jury. Bowe v. Eaton, 17 Wn. App. 840, 845, 565 P.2d 826 (1977); Restatement (Second) of Torts § 46, comment h (1965).

In the instant case there is no evidence of any intentional or reckless

acts. In fact Koker stated at the hearing before the trial court, "I don't see that these people want to go about doing harm deliberately." Such statements are inconsistent with a claim for outrage. Grimsby v. Samson, supra. Even though the extreme and outrageous character of the conduct may arise from the actor's superior position, no liability results from "mere insults, indignities, or annoyances." Contreras v. Crown Zellerbach Corp., (Stafford, J., concurring), 88 Wn.2d 735, 744, 565 P.2d 1173 (1977); Restatement (Second) of torts § 46 comment e. The trial court properly dismissed this cause of action as a matter of law. Bowe v. Eaton, supra.

LEGAL MALPRACTICE

Betts argues in his cross-appeal that summary judgment should have been granted on the issue of legal malpractice because the affidavit of Koker's expert is insufficient to create an issue of fact.

A plaintiff in a medical malpractice case must establish a standard of care, and violation of that standard, through expert testimony, unless laymen would have no difficulty recognizing the claimed negligence as a departure from prevailing standards. Walker v. Bangs, 92 Wn.2d 854, 858, 601 P.2d 1279 (1979); Swanson v. Brigham, 18 Wn. App. 647, 651, 571 P.2d 217 (1977).

In support of her claim Koker filed the affidavit of Chas. Talbot, an attorney, which states:

I am unable to form an opinion as to whether Mr. Betts' handling of the case met the applicable professional standards. The record shows numerous instances of highly questionable acts and omissions by Mr. Betts, which suggest, but do not conclusively establish, significant deviations from acceptable practice.

(Italics ours.) When an expert cannot state an opinion, his testimony is inadmissible. O'Donoghue v. Riggs, 73 Wn.2d 814, 822, 440 P.2d 823 (1968). Affidavits

opposing a motion for summary judgment "shall set forth such facts as would be admissible in evidence." CR 56(e). Since Talbot's affidavit did not state an opinion no material issue of fact is raised. In addition, there is no other evidence which creates a material issue of fact. The trial court erred in not granting summary judgment.

Affirmed in part. Reversed in part.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040. IT IS SO ORDERED.

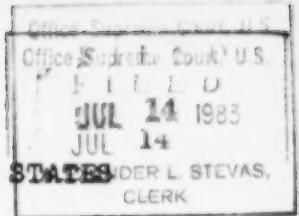
/s/

CHIEF JUDGE

NO. 82 - 1947

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982



ERICH KOKER and BEATRICE E.
KOKER, husband and wife,

APPELLANTS,

Versus

FREDERICK V. BETTS and JANE DOE BETTS,
his wife, and their marital community,
and SKEEL, McKELVY, HENKE, EVANSON & BETTS,
Law Firm Of Frederick V. Betts,

APPELLEES,

And

KENNETH L. LeMASTER and JANE DOE LeMASTER,
his wife, and their marital community, and
SAFECO INSURANCE COMPANY OF AMERICA, AND
GENERAL INSURANCE COMPANY OF AMERICA, and
FIRST NATIONAL INSURANCE COMPANY OF AMERICA.

APPELLEES.

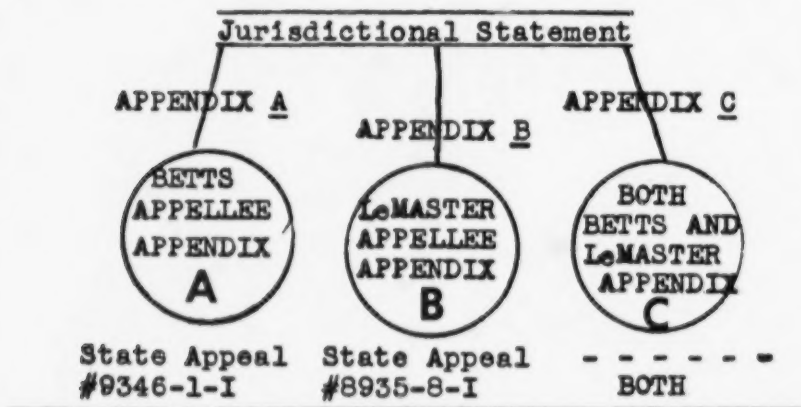
ON APPEAL FROM THE COURT OF APPEALS
DIVISION I AND THE SUPREME COURT OF
THE STATE OF WASHINGTON

{ APPELLANTS'-KOKERS REPLY BRIEF }
{ OPPOSING APPELLEES-BETTS MOTION }
{ TO DISMISS OR AFFIRM }
{ }

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APPENDIX— JURISDICTIONAL STATEMENT

There is consolidation of two appeals and two summary judgments separate proceedings in Washington State Courts. This separated appendix a necessity on appeal to this court.



EACH APPENDIX HAS AN INDEX.

APPENDIX "A" is for the retyped documents pertaining to Appellee Betts.

APPENDIX "B" is for the retyped documents pertaining to Appellee LeMaster

APPENDIX "C" is for Appellee Betts as well as Appellee LeMaster, and has authority set forth for jurisdiction et al Constitutional-Statutory provisions.

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CONSTITUTION OF THE
UNITED STATES

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"Fundamental requirement of due
process is opportunity to be
heard at a meaningful time and in
a meaningful manner."

MATTHEWS V ELDRIDGE (Va 1976)
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

ERICH KOKER and BEATRICE
E. KOKER, husband and wife, APPELLANTS,

V

FREDERICK B. BETTS, ET UX,
ET AL, APPELLEES,

AND

KENNETH L. LeMASTER, ET UX,
ET AL, APPELLEES

ON APPEAL FROM THE COURT OF APPEALS
DIVISION I AND THE SUPREME COURT OF
THE STATE OF WASHINGTON

Pursuant to Rule 16.5, Appellants'
Kokers respectfully submit this brief in
opposition to Appellees' Betts motion to dis-
miss or affirm jurisdictional statement.

We are not litigious. This appeal stems
from the only lawsuit we ever filed Pro Se.

Indigency has been refused by Appellants
even though eligible. We borrow on our home.

Jurisdictional Requirements Met

Jurisdictional requirements are met under 28 USC §1257(3) and §1257(2) AND OTHER AS PER THE NOTICE OF APPEAL. APPENDIX A (After Index) No claim was ever made under §1257(1). USC 1257 set forth APPENDIX C-60 Through C-64(a):

Appellants Kokers ask jurisdiction or in the alternative probable jurisdiction or postponement of jurisdiction until after the review on the merits.

Under 28 USC §2103, appeals from State Court improvidently taken will be regarded as petition for writ of certiorari.

Determination of the United States Court Supreme has been asked by Appellants Kokers under 28 USC §2106 to reverse the case at bar to trial, or in the alternative settlement out of court. The 14th Amendment is invoked in answer to Appellees' Betts motion. Set Forth in APPENDIX C-78 Through 80. Jurisdictional Statement Page 28, and throughout state court records.

Granting of motion for summary judgment saying there is no material fact when there is, as was done in the case at bar, is manifest error of the court and denial of constitution right to trial. 24 FR SERV 893 56c.6:

Mr. Justice Holmes said:

"Whether the right was denied or not given due recognition by the (state court) . . . is a question as to which the plaintiffs are entitled to invoke our judgment."
LOVE V GRIFFITH 266 U.S. 32-33-34:

Beatrice Koker submitted objections to the entire Appellate Review in the State of Washington, filed January 26, 1983 upon the exhaustion of all remedies in the courts. Objections to Washington State Courts evading, avoiding, depriving of constitutional rights, and all other.

There is "State Action" in the case at bar under the Constitution Amendment 14 Note 20 p 59: 28 USCA §1257(3):

"Judicial action in private disputes is a form of state action required

for application of this clause prohibiting state from abridging the privileges and immunities of citizens."

The ninth circuit Court of Appeals accepted a case for review on damages of a 3¢ stamp and costs, as a matter of principle and justice in HUGHES V GENGLER (9th Cir., 1968) 404 F 2d 229:

Judgment is "state action" within the meaning of the Fourteenth Amendment of the Constitution of the United States. In the authority of GALELLA V ONASSIS 353 F Supp 196, and 487 F 2d 986 (1973) it says:

"The claim that this constitutional right runs only against "state action" overlooks the fact that the act of a court - - even the entry of a judgment denying relief - - is state action within the meaning of the 14th Amendment."

"Conduct of an officer of state court (attorneys) constitutes "state action" within the meaning of the due process clause." 16A AM JUR §823
Constitutional Law Wests Key 253:

Questions Presented For Review

The questions presented for review by the Appellants Koker in this appeal, are within the confines of 28 USC §1257(2)(3) and the Constitution of the United States.

Any federal question capable of repetition should be in the jurisdiction of the United States Supreme Court.

Denial of a right to a trial is a legal danger and jeopardy capable of repetition, and one of the most cautiously guarded rights of the United States Constitution. The 14th Amendment is invoked herewith in answer to the motion to dismiss or affirm by Appellee-Betts. Please See: Jurisdictional Statement Page 15-16: APPENDIX C-78 Through 80:

England is the original source of our legal format beginning. The right to a trial shows that origin. ISABELL FORESCUES CASE (1611) Lane, 91, 145 Eng Rep 324. A penalty was imposed upon her for recusancy (absence

from church). An inquisition issued and the case was tried by a jury.

FEDERAL QUESTIONS ARE PRESENTED

Appellee-Betts has made a motion to dismiss a jurisdictional statement on the ground no federal question is involved. Nothing about the appellants case could ever be fictitious or frivolous as alleged by such a motion. Amendment 14 of the Constitution is invoked herein and throughout the record and appeals and a motion to dismiss on the ground of no federal question must be denied as per 28 USCA §1257 Note 70 Page 192 "Fictitious or Frivolous Questions - Generally".

The federal questions are presented at every step of proceedings in state courts. The "WHERE AND HOW FEDERAL QUESTION RAISED" in the Jurisdictional Statement Page 45 Through 54. This pertains to the Complaint for both Appellee-Betts and LeMaster. APPENDIX A-61 Through A-78 is quotes from the record for

federal question for Appellee-Betts only, and where and how raised in clerk's papers, report of proceedings, (both in trial court) the appeal, civil appeal statement, opening and reply brief of appellant, and petition for review and petition for reconsideration rehearing State Supreme Court and Court of Appeals, and including references to "Class." (A similar record for Appellee-LeMaster from his records in state courts in APPENDIX-B)

The duty rests on the United States Supreme Court to decide for itself facts or constructions upon which federal constitutional issues rest. 28 USCA §1257 Note 13 Page 155: "Determination".

The Jurisdictional Statement has questions presented for review Pages 1 Through 6. The APPENDIX A B C are "working" documents in close proximity with the Jurisdictional Statement. There are many matters within the confines of 28 USC §1257 presented by the case at bar, some created by state appeal.

BURDEN OF PROOF NOT MET

Appellee-Betts is the moving party for motion summary judgment and did-not meet the burden of proof, did-not make motion on three parts of complaint yet received a granted summary judgment without court jurisdiction. No ruling on appeal. Jurisdictional Statement P 23 and p 27: APPENDIX C-4 Through C-6:

The sparse check marks in the left hand margin of the index to clerk's papers, designate those papers filed by Appellee-Betts. APPENDIX A-37 Through A-40:

This case involves substantive and manifest rights of Appellant and the corresponding wrongs by appellees - both of them. A question of burden of proof may amount to a federal question when intimately involving substantive rights under a federal statute. 28 USCA §1257 Note 110 p 220: "Burden Of Proof."

No defense by the plaintiff was required where there is insufficient showing by the

STATE ACTION

Judicial action may be state action.

USCA Amendment 14 §1 p 280 Note 15: 16 AM JUR

2d Constitutional Law §491: Landmark case is

SHELLEY V KRAEMER 334 US 1, 14: 68 S Ct 836,

842, 92 L Ed 1161, 1181 (1948) which said:

"That the action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this court."

STATE BAR

There is controversial conflict as to the "private" status of an attorney's profession when actually the attorneys are in the business of "public" protection, and this constitutionally involves both State and Federal. Attorneys should be "under Color Law".

An attorneys business is public interest, tied to a state-created agency "State Bar" that can constitutionally levy membership

WHY?!

Why would the State Supreme Court deny the petition for review when Beatrice Koker submitted all four of the considerations for governing acceptance of review, when any one would suffice? There were conflict cases in rulings on summary judgment on point, and significant question of Constitutional law, and an issue of substantial public interest.

Why would a trial court grant summary judgment for one defendant without a motion? One summary judgment motion was not in affidavit form and by rule the motion was not properly to be weighed so far as its factual statements are concerned. Summary judgment was improperly granted to three parts of this case. WHY? "General denial" offered when an affidavit which merely denies the allegations contained in opposing party's pleadings is not sufficient for summary judgment. Summary judgment granted. WHY? CR 56-Rule 56 says NO.

MEANINGLESS APPEALS

The State Courts have so departed from the accepted course of judicial and appeals and review, that it calls for supervision and justice from the highest court of the land. Be it noted from record, the appeals are meaningless and add further deprivations and denials of rights contrary to Constitutional Amendment 14 Note 1240 "Appellate Procedure."

Motions not ruled. Additional authority relevant to reversal or dismissal of cross-appeal "filed with no further action" after much controversy and being timely-properly filed.

An attorney affidavit to the Appellate Court holds discrepancies from the records of four counties. A member of this attorney's Law Firm, asked that my "show cause" for these discrepancies be unfiled - - it was done. Unfiling a false affidavit? Unfiled when it is relevant to the appeal and my deprivation?

CIVIL RIGHTS CASE

MILLER V WASHINGTON STATE BAR ASSOC.

679 F 2d 1313 (1982), an attorney brought a civil rights action claiming "admonition letter" adversely affected him, and no recourse. Federal District Court dismissed. 9th Circuit Court of Appeals reversed.

A SENSIBLE AWARD

Dissatisfaction with the 1976 jury award of \$4,600. for a permanent drop foot injury and permanent cervical injury is voiced by the Court of Appeals Division I by comparison. The jury was so confused they took a criminal vote of "guilty or not guilty" in admitted liability, damages only. APPENDIX C-31(a):

"\$145,000. is a sensible award for a drop foot injury," as per Court of Appeals Div I ruling in RYAN V WESTGARD 12 Wash App 500(1975) 530 P 2d 687:

In addition to injuries, I have suffered 3 obstructions of justice. CONST AMENDMENT 5
Note 12 p 346: "due process" "meaningful."

fees and compel membership to the State Bar as protection of people by "policing" the legal profession for public good.

The standards of membership in the State Bar and fees should be a matter of pride and integrity and kept voluntarily without exception. The State Auditor and State Bar control the funds, and further align the state and attorneys and the State Bar Agency.

Beatrice Koker in Jurisdictional Statement p 55 asking the Supreme Court of the United States to change the law of the land to include attorneys under color of law. APPENDIX C-82(b)-83-83(a): I am asking another landmark decision overruling prior law of the land, such as was decided June 6, 1978 by this court in MONROE V PAPE (1961) 365 US 167, 5 L Ed 2d 492, 81 S ct 473: DECISIONS OF UNITED STATES SUPREME COURT §3 p xxv (1977 Okl) 1978 Term:

STATE BAR ACT RCW 2.48

LEGAL MALPRACTICE

The Court of Appeals Division I reversed a denied summary judgment for legal malpractice and did so contrary to law without abuse of discretion by trial court judge. Their excuse was dissatisfaction with the Affidavit of lack of standard of care, and no material facts. Jurisdictional Statement p 31: and APPENDIX C-38 and C-39; APPENDIX A-19 Through A-34:

Appellee-Betts failed to properly present factual element of case and was in conspiracy and collusion suppressing and misrepresenting material facts of injuries, to a jury. The jury was so confused it took the jury foreman in the trial of 1976, nearly two hours to convince the jurors the victim of auto injuries was "not guilty." APPENDIX C-31(a): Determination of probable result in prior action giving rise to malpractice claim is a jury question. VOLUME 1 PROFESSIONAL LIABILITY

DIGEST 3-134 §3298: 2 PROFESSIONAL LIABILITY
REPORTER 176: The rulings of the state courts
in the case at bar are contrary to law et al.

"Bad faith" and "negligence" found
against Appellee-Betts in another state case.
This has every relevance to the case at bar
and the contract with my attorney verbally.
83 Wn 2d 787 (1974) and 9 Wash App 180, 511 P2d
1020: HAMILTON V STATE FARM MUTUAL AUTO INS.

It was reading this case where I first
learned my former attorney Betts was a staff
attorney for an insurance company for 30 years
then. The trial of 1976 with lies and deceit
held two defense attorneys for insurance
companies. There is authority on acting in
bad faith to save insurance company money.
CRISCE V SECURITY INS CO 426 F 2d 173 (1967):
YOUNG V AMERICAN GAS CO 416 F 2d 906 (2nd Cir
1969): KAUDERN V ALLSTATE INS CO (NJ 1969):
277 FED SUPP 83)
COPPAGE V FIREMAN'S FUND INS CO 379 F 2d 62,
(6th Cir., 1967): Betts bad faith case supra
from loyalty to insurance company.

REHEARING- RECONSIDERATION

Jurisdictional Statement p 59: APPENDIX

C-80(a): The repeal of the state rehearing rule is repugnant to the Constitution of the United States, because there is denial of a right to complete "day in court." This appellant was further constitutionally shunned because of the rehearing not being denied "no you may not have a rehearing," or "yes you may have a rehearing." I was denied a rehearing without a yes or no on the motion.

In 28 USCA §1257 Note 401 p 315 "power of court" where the court has jurisdiction on the ground that the constitutionality of a state law is involved, it may dispose of all questions in the case. SCOTT V DONALD (SC 1897) 17 S Ct 265, 165 US 58, 41 L Ed 632:

The Federal Constitution has secured my rights. The question with the rehearing law is the effect and operation as put in force in the state. To further deny and deprive rights, a reconsideration-rehearing motion timely should

Rehearing-Reconsideration

not ever be affected adversely by a premature mandate, when the powers of a court are so warranted to see that justice is done.

28 USCA §1257 Note 185 p 235 "Construction of State Statute."

It is apparent to repeal a rehearing rule is to save court time, but in that time-saving process who is to save Constitutional Rights to the day in court?

CONCLUSION

Appellants-Kokers ask this court not to dismiss nor refuse the Jurisdictional Statement, but to accept the Jurisdictional Statement and jurisdiction or in the alternative (as per the appeal) jurisdiction, probable jurisdiction or postponement of jurisdiction until review on the merits.

WHAT IS IN THE CASE AT BAR THAT
APPELLEES-BETTS WISH QUASHED BEFORE
A REVIEW ON THE MERITS AND THE
SUPREME COURT HEREIN FINDS OUT?

moving parties. The complaint was not answered. There were no objections and no motions from either defendants Betts nor LeMaster in trial court after the initial summary judgment motion.

The extensive record of Beatrice Koker opposing summary judgment in trial court even though the moving parties did-not meet their burden of proof, was to estopp them voluntarily, from evading, avoiding, and escaping. To no avail. 6 J. MOORE, FEDERAL PRACTICE §56.22(2) p 824-825 2nd Ed 1966:

The Appellees-Betts motion to dismiss or affirm the jurisdictional statement or refuse jurisdiction, is inadequate in that it is their opinion, not fact.

The crux of the court overload ties directly to attorneys not doing their duty in the trial court level. This opinion becomes fact from my own knowledge and experience of the past 12 years.

It is important for this court to know Appellees-Betts thought it "might be advisable to settle the whole thing." The scene was the trial courtroom for signing of the order. QUOTING FROM: RP "ORDER" SEPT 3, 1980. Present In Court: Honorable Judge Goodloe, Mr. Mines (Attorney Of Record For Mr. Betts Then) and Beatrice Koker. Pages 5/23-25: Page 6/1-6: Page 6/8-10:

THE COURT: "I think those settlement conferences at the appellate level are a great thing." "Maybe you can settle the whole thing."

MR. MINES: "It might be advisable."

MRS. KOKER: "I would like to get it settled, too, but it has to be fair."

THE COURT: "Yes, and I know it will be."

ONLY FOR THE TRIER OF FACT: The case at bar is permeated with questions of motive and intent only for trier of fact, and not for summary judgment. The appellees (both) strive to evade, avoid, escape - - Appellee-Betts even now on this motion.

Appellants-Koker submit this reply brief in good faith. Appellees-Betts has no valid reasons to dismiss the jurisdictional statement nor refuse jurisdiction. No reasons, no authority, no argument from Appellees.

For this reason and all foregoing reasons in this reply brief in opposition, and for all reasons submitted in Appellants' jurisdictional statement and the APPENDIX ABC we respectfully request the motion of Betts be denied and that jurisdiction or probable jurisdiction or postponement of the jurisdiction until review on the merits be granted Appellants-Kokers. That dismissal of the jurisdictional statement be denied.

Signature Of
Beatrice Koker Only
For Notary:

Respectfully submitted,

Beatrice E. Koker

Beatrice E. Koker, Pro Se

Erich Koker

Erich Koker

SUBSCRIBED AND SWORN TO BEFORE ME THIS

DAY OF July 1987

James G. McArthur
Notary Public in and for the State of Wash.

Wattle
Residing at

CERTIFICATE OF SERVICE

I, Beatrice E. Koker, Petitioner-Appellant, hereby do certify that I made personal service of 3 copies (three) each of the reply brief in opposition to appellees-Betts motion to dismiss or affirm on July 12, 1983. And sent 40 copies certified express mail to the United States Supreme Court on July 11, 1983.

Beatrice E. Koker

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